United States Court of Appeals for the Second Circuit



APPENDIX

GEORGE RIOS, EUGENE C. JENKINS, ERIC O. LEWIS and TYLIE B. RUTLEDGE,

Plaintiffs-Appellees,

-and-

JOHN GUNTHER, CHARLES T. FARRELL, FRANK MONTANARO, HUGH DONNEGAN, ROBERT McMILLION, MICHAEL LONIGRO and ANTHONY BORELLI, each of them individually and on behalf of all other persons, members of the Metal Trades Branch or "B" Local of Enterprise Association, Local 633, and having four years' or more experience as steamfitters or in employment reasonably related or similar to steamfitting work, similarly situated, Applicants to Intervene-Appellants,

-againstENTERPRISE ASSOCIATION STEAMFITTERS LOCAL UNION
#638 of U.A.: MECHANICAL CONTRACTORS ASSOCIATION OF
NEW YORK, INC. and the JOINT STEAMFITTING APPRENTICESHIP COMMITTEE OF THE STEAMFITTERS! INDUSTRY EDUCATIONAL FUND,

Defendants-Appellees.

UNITED STATES OF AMERICA (Equal Employment Opportunity Commission),

Plaintiff-Appailee.

-and-

JOHN GUNTHER, et al., etc.,

Applicants to Intervene-Appellants

-againstENTERPRISE ASSOCIATION STEAMFITTERS LOCAL UNION #638 of U.A., et al.,

Defendants-Appellees.

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

GEORGE RIOS, et al., etc.,

Plaintiffs-Appellees,

-and-

JOHN GUNTHER, et al., etc.,

Applicants to Intervene-Appellants,

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638 OF U.A., et al.,

Defendants-Appellees.

UNITED STATES OF AMERICA (E.E.O.C.)

Plaintiff-Appellee,

-and-

JOHN GUNTHER, et al., etc.,

Applicants to Intervene-Appellants,

-against -

ENTER PRISE ASSOCIATION STEAMFITTERS LOCAL 638 of U.A., et al.,

Defendants-Appellees.

Relevant Docket Entries

Feb. 26, 1971 Filed Complaint and issued summons

June 21, 1973, Filed Opinion and Order and Judgment

- Oct.: 26, 1973 Filed Motion to extend transitory provisions, etc. (Motion dated October 15, 1973)
- Nov. 2, 1973 Filed defendant Enterprise Ass'n's affidavits in opposition
- Nov. 20, 1973 Filed Order of Nov. 15/20, 1973
- Mar. 29, 1974 Filed Order adopting Affirmative Action Plan
- Apri 17, 1974 Filed Motion to Intervene
- May 1, 1974 Filed Motion to hold Enterprise Ass'n in contempt
- May 1, 1974 Filed affidavit of Johnathan Lang
- May 1, 1974 Filed affidavit of T.A. Shaw, Jr.
- May 3, 1974 Filed affidavit of V.Brennan in opposition to motion to intervene
- May 3, 1974 Filed affidavit of J.J. Sheeran in opposition to motion to hold in contempt
- July 9, 1974 Filed Memorandum, denying motion to intervene
- July 9, 1974 Filed memo endorsed denying motion to hold in
- July 9, 1974 Filed ply affidavits of C.T. Farrell and R. Graham
- July 9, 1974 Filed affidavit of D. Yeager
- Aug. 6, 1974 Filed Notice of Appeal

I. MATERIALS DESIGNATED BY APPELLANTS.

OPINION AND ORDER APPEALED FROM (Rec. #96)

(caption omitted)

MEMORANDUM

BONSAL, D. J.

This motion for leave to intervene was filed on April 17, 1974. An Order and Judgment in these consolidated actions was filed on June 21, 1973, and the Judgment was affirmed and remanded for further findings on June 24, 1974.

On March 29, 1974, following lengthy conferences with counsel for all parties in these consolidated actions, the Court adopted an Affirmative Action Plan pursuant to the Order and Judgment of June 21, 1973. Vincent D. McDonnell, Esq., the Administrator appointed under the Order and Judgment, was continued as Administrator to implement the provisions of the Affirmative Action Plan and to remain in office until July 31, 1977 unless the Court otherwise determines.

These consolidated actions were brought under Title VII of the Civil Rights Act of 1964. The purpose of the Court's Order of June 21, 1973 and of the Affirmative Action Plan was to correct past discrimination in the steamfitting industry with respect to nonwhites and to establish procedures to prevent such discrimination in the future.

(Opinionand Order Appealed From)

The seven applicants to intervene are white members of the B Branch of Local 638 who allege that Local 638 has failed to transfer them to the A Branch although they are qualified for such transfer. They seek to maintain their proceeding as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the class to consist of approximately 500 white B Branch members working under A Branch permits.

Section II B of the Affirmative Action Plan provides for direct admission to the A Branch under the criteria therein set forth and provides that "All admissions into the Union shall be on the same basis, regardless of race, color or national origin..."

The motion to intervene is opposed by the Union, by the plaintiffs in the Rios action, and by the Government. It would appear that the applicants to intervene feel that perhaps due to the Title VII actions and the Affirmative Action Plan, white members of the B Branch are being passed over by the Union in their desire to join the A Branch, in favor of nonwhite applicants.

The motion to intervene as a matter of right under Rule 24(a) of the Federal Rules of Civil Procedure is untimely since these Title VII actions have already gone to Judgment and the Judgment has been affirmed by the Court of Appeals. For the same reason, the motion to intervene is untimely under Rule 24(b). Moreover, the provisions of the Affirmative Action Plan are flex-

(Opinion and Order Appealed From)

the attention of the Administrator for appropriate action. If
they are charging the Union with committing an unfair labor practice in violation of the Labor Management Relations Act, 1947
(29 U.S.C. §§ 141 et seq.) or with violating the Labor-Management
Reporting and Disclosure Act of 1959 (29 U.S.C. §§ 401-531), their
remedy, if any, must lie elsewhere since their claims do not raise
issues under Title VII.

For the foregoing reasons, the motion for leave to intervene is denied.

It is so ordered.

Dated: New York, N.Y.

July 9, 1974.

U. S. D. J.

Applicants' Motion to Intervene (Rec. #80)

(Caption Omitted)

SIRS:

PIEASE TAKE NOTICE that upon the affidavit of JOHN GUNTHER sworn to the Chaq of March, 1974, and annexed hereto, and upon the proposed class action complaint annexed to the said affidavit, and upon all other papers and proceedings herein, the undersigned will move this Court on the 22 day of April, 1974, at 9:30a.m. or as soon thereafter as counsel can be heard, in Room United States Court HOuse, Foley Square, New York, New York, as follows:

- 1. For an order pursuant to Rule 24(a)(2), Federal Rules of Civil Procedure, granting to Applicants to Intervene herein leave to intervene as of right in each of the two combined actions captioned as above; and
- 2. for an order pursuant to Rule 23(c)(1) determining that Applicants to Intervene may maintain this proceeding as a class action on behalf of the class as described hereinabove and in the annexed affidavit of JOHN GUNTHER, in accordance with Rule 23(b)(2), Federal Rules of Civil Procedure; and
 - 3. for such other, further and different relief as may

be appropriate.

Yours, etc.,

BURTON H. HALL
Attorney for Applicants to
Intervene
401 Broadway
New York, N.Y., 10013
431-9114

(Caption of Supporting Affidavit Omitted)

STATE OF NEW YORK) SS.:

JOHN GUNTHER, being duly sworn, deposes and says:

- 1. I am one of the applicants to intervene herein;
 I am fully familiar with the facts recounted herein; and I make
 this affidavit in support of applicants' application to intervene
 herein.
- 2. I have worked as a steamfitter in New York City for the past six years. For the first half of that six-year period I worked non-union; in 1971 I became a member of the Metal Trades Branch, or "B" Local, of Enterprise Association, Local 638. I have remained a member of the "B" Local ever since, worki as a steamfitter under permit from the "A" Local, and have made repeated requests for membership in or transfer into the "A"

Local.

3. My fellow-applicants-to-intervene have even longer records as steamfitters than I have. Applicant McMILLION has been a member of the "B" Local for more than 21 years, working under "A" Local permit in all branches of the steamfitter's trade. Applicant FARRELL has worked as a steamfitter for more than eight years and has been a member of the "B" Local, working under "A" Local permit, for nearly seven years. Applicant LONIGRO has worked 27 years as a welder, a section of the steamfitter's trade, in the United States and Venezuela; he has been a member of the "B" Local, working under "A" Local permit, for the past seven years; he is a certified welder, a distinction that makes him one of the elite in the steamfitter's craft. Applicant BORFLLI has worked under "A" Local pemit, as a member of the "B" Local, for the same company by which he is presently employed for the past five years. Applicant MONTANARO, also a certified welder, has worked under "A" Local permit for his present employer for the past six years and, previously, worked for eight years as a certified welder in Italy. He has been a momber of the "B" Local since 1968. Applicant DONNEGAN has worked as a "B" member under permit from the "A" Local for the past four years and, prior thereto, worked two and one-half years as a steamfitter non-union.

4. Each of the seven-named applicants to intervene has made repeated requests to join Local "A." Applicant McMILLION has been making such requests, both in writing and orally, for the past 21 years -- and he has yet to receive an applicant blank. His repeated written requests have been unanswered; on various occasions, over the past 21 years, he has gone to the "A" Local and made oral request, however on such occasions he has been told "Don't make waves' and "Wait for another time." His most recent written request was sent on March 22 of this year. Applicant LONIGRO, who made written request for an application blank at the beginning of January 1974, has also not yet received an application blank. Applicant MONTANARO, whose most recent request for an application blank was made in writing on March 7 of this year, has also not yet received one. Applicant FARRELL has made four requests, the first in January 1971, the next ones in May 1971, January 1972 and September 1973 -- all of them in writing by certi fied or registered mail. The first three were ignored and he received no replies to them. In reply to the September 1973 request, FARRELL received an application blank. He completed it and sent it to the "A" Local -- but in reply he received another application blank. FARRELL wrote to John Sheeran, Secretary-Treasurer of the "A" Local, asking what had happened to the first application blank and what he should do with the second one -- but

Sheeran has never bothered to answer his letter. The others (including myself) have submitted application blanks received in reply to requests made since the expiration of the three-month period following entry of the June 21, 1973 Order in this case.

- myself) are residents of New York City or of Nassau or Suffolk County; none has ever been convicted of a job-related crime; all have had more than four years' experience as a journeyman steamfitter. Under the terms of the Order of June 21, 1973, paragraphs 11 and 12, and of November 20, 1973, and under the terms of the proposed Order presently before the Court for settle ment, paragraphs 16 and 17, each one of us appears entitled to be accorded membership in the "A" Local upon either completion of the practical examination or certification by an employer.
- 6. There are approximately one thousand persons now working, as "B" Local members, under "A" Local permits in the New York City (or seven-county) area. The remaining three-to four thousand members of the "B" Local work in an entirely different trade or trades, for an entirely different rate of pay. Of the one thousand or so "B" men working as steamfitters under A" Local permit, about one-half -- or five hundred -- meet the requirements of paragraphs 11 and 12 of the June 21, 1973 Order, of paragraph 2 of the November 20, 1973 Order, and of paragraphs

16 and 17 of the proposed Order presently before the Court, insofar as these relate to persons other than non-white and Spanish-surnamed persons. None of these 500 at present, to my knowledge, are non-white or Spanish-surnamed, since all or almost all have taken advantage of this Court's Order.

- 7. It is this class of approximately 500 "B" member working under "A" Local permit that the Applicants to Intervene seek to represent in this action. The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class and the claims of the seven ramed applicants are typical of the claims of the class. I believe that all of this is apparent from the size of the class (about 500 in number) and from the other facts given above.
- 8. I verily believe that each of the seven named Applicants to Intervene will fairly and adequately protect the interests of the class.
- 9. The defendant Local 638 has acted and/or refused to act on grounds generally applicable to the class as a whole. Prior to the entry of this Court's Order of June 21, 1973, the defendant union either ignored or rejected all requests from b" members for transfer into, or for application for membership in, the "A" Local. Since the entry of that Order, and as a result

of it, "B" members who are either non-white or Spanish-surnamed have been permitted membership in the "A" Local upon either the showing of an employer's certification or successful completion of the practical examination. But so far as I am aware -- and I have energetically and in good faith made inquiry among fellow members -- all "B" members other than those who are/were non-white or Spanish-surnamed, up to September 1973 at least, had their requests either ignored or rejected by the "A" Local and none to my knowledge have yet been admitted to membership in the "A" Local. THe only apparent difference among the members of the class that we seek to represent is that, since September 21, 1973, some members of the class have received application blanks in reply to their requests; some have not received application blanks or any other reply to their requests; and at least one (Paul Permikoff, now deceased) had his request for an application blank, though the request was made after September 21, 1973, rejected by the union on the ground that the union is not issuing applications "at this time" to "B" members. Whatever distinctions might be drawn between these varying responses, it is apparent that the action and/or inaction of the "A" Local is based on grounds and has been based on grounds which have general application to the class. And the results in all cases have been the same: all members of the class have been denied membership in the "A" Local and at

least so far all have been denied an opportunity to take the practical examination.

- 10. For the reasons given above (in paragraph 9), I verily believe that final injunctive relief or corresponding declaratory relief with respect to the class as a whole is appropriate.
- 11. As stated in paragraphs 5 and 6 hereinabove, it is apparent (and I believe) that the seven named applicants and the approximately 500 other members of the class represented are entitled to take the practical examination and, either upon successful completion thereof or upon certification by an employer be given membership in the "A" Local, on the basis of the orders of this Court dated June 21, 1973 and November 20, 1973; this right on their part (our part) is reaffirmed in the proposed Order presently before the Court. Accordingly, the claim made by us is at least ancillary to the main action. Additionally, we assert the right of membership in the "A" Local on the basis of the constitutions of the Enterprise Association and of its parent international union, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada. This companion claim, though not pressed on the prese application, provides -- so I am advised by counsel -- an independent basis for Federal jurisdiction, since under the Labor-

(Applicants' Mottor ryone)

Management Reporting and Disclosure Act of 1959, 29 USC 401 et seq., any person who has fulfilled the requirements for membership set forth in a labor organization's constitution and bylaws, and who has not withdrawn or been suspended or expelled, is entitled to the rights of membership therein.

- relating to the admission of persons, and in particular "B" members, other than non-white and Spanish-surnamed ones, to the "A" Local are preperly enforced and unless the class of such persons is properly represented in this action, our economic interest in union membership and in access to employment in the steamfitting trade will, or at least may, be impaired. Our economic interest relates to the transaction that is the subject matter of the action. And we are so situated that the disposition of the action may as a practical matter impair or impede our ability to protect that interest.
- 13. Our interest in the transaction that is the subject matter of the action is not adequately represented by any party.
- 14. No prior application for the relief requested herein has been made.

WHEREFORE, your deponent prays that the Applicants!

appliation to intervene be granted.

Sworn to before me this

day of March, 1974

Commission Expires March ad.

John Gunther

(Caption of Applicants' Proposed Complaint Omitted)

Plaintiffs, for their complaint, by their attorney, Burton H. Hall, Esq., respectfully show the Court that:

- 1. These two actions are both brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2(c) and 2000e-2(d), and both actions are within the Court's statutory jurisdiction under such sections. The claim of the Applicants to Intervene is ancillary to the two main actions. In addition, jurisdiction over Applicants' claim is independently established by Section 102 of the Labor-Management Reporting and Disclosure Act of 1959, 29 USC 412.
- 2. Defendant Enterprise Association Steamfitters Local 638 (hereinafter referred to as Enterprise) is and at all times herein mentioned has been a local labor organization engaged in an industry affecting commerce within the meaning of the Labor-

Management Reporting and Disclosure Act of 1959 and the recognized representative of employees under the provisions of the National Labor Relations Act as amended; it maintains its principaloffice at 841 Broadway in the City, County and State of New York and within the geographical jurisdiction of this Court.

3. CLASS ACTION ALLEGATIONS . (a)This action is properly maintainable as a class action pursuant to Rule 23(b)(2), Federal Rules of Civil Procedure. (b) There are approximately 500 members of the class represented by applicants. (c) The class represented consists of those members of the Metal Trades Brach or "B" Local who meet the conditions of paragraphs 11(a) and 12 of this Court's Order of June 21, 1973, herein, save for completion of the practical examination. (d) The claims of the named Applicants are typical of the claims of the class as a whole and there are no conflicts of interest among the class. (e) The questions of law and fact common to the class are the entiblement of members of the class, under this Court's orders in this action, to receive application forms for membership in the "A" Local of Enterprise, to take the practical examination, and to membership in "A" Local upon successful completion thereof and/or upon certification of their skills by an employer; and also their entitlement, under the constitution and bylaws of Enterprise and its parent International

Labor Organization, and hence under Title I of the Labor-Management Reporting and Disclosure Act of 1959, to membership in the "A" Local of Enterprise.

- 4. Enterprise, by its applicable rules, regulations, bylaws and/or constitution, is divided into an "A" Local and a "B" Local, the latter also referred to as the Metal Trades Branch. The "A" Local has jurisdiction over steamfitting work and all persons working for employers party to a collective bargaining agreement with the "A" Local are required, if not members of "A" Local, to have permits issued by "A" Local in order to find and hold employment. The "A" Local further follows a practice of requiring that all non-members of "A" Local he discharged, in the event of unemployment among "A" Local members, in order to make employment available for "A" Local members.
- 5. Fach of the Applicants, and each member of the class represented, is a member of the "B" Local or Metal Trades Branch; each has worked for four years or more as a steamfitter or in employment reasonably related or similar to steamfitting work, and is qualified in the trade; and each has sought membership in and/or transfer into the "A" Local, but each has been unsuccessful.
- 6. Each of the Applicants, and many other members of the class represented, have requested application forms from Enterprise for "A" Branch membership.

- 7. Applicants McMILLION, LONIGRO and MONTANARO, and many other members of the class represented, have not been provided with application forms from Local 638 for "A" Branch membership despite reasonable request made by them therefor, and the defendant Enterprise has failed in violation of this Court's Order herein of November 20, 1973 to provide them with such forms.
- 8. Applicants GUNTHER, FARRELL, DONNEGAN and BORELLI, and many other members of the class represented, have duly completed and submitted application forms to Local 638 for "A" Branch membership but have not been given such membership and have not been tested or processed in accordance with paragraph 12 of this Court's Order herein of June 21, 1973 or with this Court's order of November 20, 1973, and the defendant Enterprise has failed in violation of the said orders to provide them with membership in "A" Local or to test and process them as provided in the said orders.
- 9. Unless otherwise ordered by this Court, defendant Enterprise will continue to deny Applicants and other members of the class represented membership in the "A" Local and a reasonable opportunity, in accordance with this Court's orders, to be tested and processed, and to tomplete a practical examination, for member ship in the "A" Local, and by reason thereof the Applicants will suffer grievous and material enonomic injury for which there is

no adequate remedy at law.

- members of the class represented are not adequately represented by any of the present parties in either of these two actions.
- 11. The Constitution and by-laws of Enterprise, and the Constitution and by-laws of its parent international labor organization give to members of the "B" Local or Metal Trades

 Branch, situated as Applicants are, a right of trans fer into the "A" Local.
- represented, have fulfilled tor have made reasonable and diligent effort to fulfill the requirements for membership in the "A" Local and by reason thereof are members of the "A" Local within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.
- recognize Applicants and other members of the class represented as members of the "A" Local and has denied them the rights guaranteed by Title I of the Labor-Management Reporting and Disclosure Act of 1959; unless otherwise ordered by this Court, defendant Enterprise will continue to so fail and refuse and will continue to deny ther such rights, and by reason threof Applicants and other members of the class represented will suffere grievous and material and

irreparable injury for which there is no adequate remedy at law.

14. Applicants have duly appealed from the failure and refusal and denial of rights set forth in pargraph 13 hereinabove to the extent that it is reasonable to do so, and any further efforts on their part to appeal within the labor organization wou be futile.

WHEREFORE, Applicants demand Judgment:

- 1. permanently enjoining Enterprise, its officers, agents servants, employees, attorneys and all other persons in active concert or participation with any of these from denying to Applicants and other members of the class represented the rights of membership in the "A" Local and from failing or refusing to recognize them as members thereof;
- 2. ordering and directing defendant Enterprise to provide all applicants and other members of the class represented who have requested but not yet received application forms for membership in the "A" Local or Branch with such application forms;
- Applicants and all other members of the class represented with an opportunity to take the practical examination called for in this Court's orders and/or be otherwise tested and processed in accordance with this Court's orders, and to accept and recognize Applicants

and other members of the class represented as members of the "A" Local upon either their successful completion of the practical examination or their certification by an employer;

- 4. for the costs and necessary disbursements of this action, including a reasonable attorney's fee; and
- 5. for such other, further and different relief as may be appropriate.

BURTON H. HALL
Attorney for Applicants
401 Broadway
New York, N.Y., 10013
431-9114

Opposing Affidavits of Vincent Brennan, et al.

(Rec. #87)

(Caption Omitted)

STATE OF NEW YORK)
COUNTY OF NEW YORK)

VINCENT E. BRENNAN, being duly sworn, deposes and says:

- I am the President of Enterprise Association
 Steamfitters Local 638 of the United Association (the "Union").
- 2. This affidavit is made in opposition (a) to Messrs. Hall and Gunther's motion to intervene and (b) to their motion to proceed as a class action.

-22a-

(Opposing Affidavits of Vincent Brennan, et al.)

- 3. These lawsuits (71 Civ. 847 and 71 Civ. 2877) were brought on behalf of blacks and Spanish surnamed individuals who were allegedly excluded from Construction Branch membership. There are now about 800 such non-white members.
- 4. The sudden infusion of such large numbers of people has created unemployment among the members--new and old--black and white--in this Union. These events have been questioned by the Union in a lawful way--appeal to a higher court. At all times to the best of my knowledge, the Union has fully and fairly implemented the Court's Orders to benefit the non-whites.
- 5. It is inexplicable to me how anyone can claim that they were discriminated against by the Union because they are white when this Court in fact ruled that the Union was guilty of discrimination in favor of the alleged class at the expense of non-whites.
- 6. This Union opposed in this Court and in the Court of Appeals the racial goals and quotas imposed upon it by this Court for the purpose of benefiting its prior members and potential white members—the alleged class now seeking to intervene. The Union has represented the alleged class.
- 7. The unplanned, unregulated, wholesale en masse admission of whites was sought by the Mechanical Contractors Association of New York, Inc. which has represented the alleged class in an ill-conceived manner.

-23a-

(Opposing Affidavits of Vincent Brennan, et al.)

- 8. The United States Attorney's Office has also represented the alleged class in asking that whites as well as non-whites benefit from this Court's Orders and insisting throughout the proceedings on compliance with the Court's Orders.
- 9. This Court appointed an Administrator to oversee the implementation of the Decree and he has done so. The Union, upon the direction of the Administrator, has lived up to the requirements of the Decree with the expenditure of a reat deal of time, effort and money. I believe that the Administrator will enforce the Affirmative Action Plan, including those portions beneficial to the alleged class, with the same vigor with which he has enforced the prior Orders of this Court. Mr. Hall's belated application for the job of Administrator should be rejected.
- request payment by way of legal fees for his belated attempt to intrude into this case: the Union must pay its own lawyers and it must pay much of the Administrator's fees; it has already been asked to pay the government funded Rios attorneys; basic equity prohibits an award of fees to Mr. Hall who is trying to jump on the bandwagon long after judgment has been entered.
- 11. Upon information and belief, the vast majority of white Metal Trades members do not want to be represented

by Mr. Hall or Mr. Gunther so that those wanting to be represented by Messrs. Hall and Gunther are not too numerous to be brought into Court individually. Most members of the alleged class who want to join the Construction Branch will apply in a proper manner pursuant to the instructions of the Administrator; the seven named applicants to intervene are not typical of and will not adequately represent the alleged class.

12. The vast majority of the alleged class support their Union and do not want to sue it.

WHEREFORE, deponent prays that the motions to intervene and to proceed as a class action be denied in their entirety.

| Minimal E. Buen

Sworn to before me this

30 th day of april

, 1974

Jane M. Garilly
Notary Public

JANE M. FARRELLY
Notary Public, State of New York
No. 41-1168549 - Queens County
Certificate filed in Queens County
Term Expires March 30, 1975

(Caption Omitted)

COUNTY OF NEW YORK)

RICHARD VITTILO

, being duly sworn, de-

poses and says:

- 1. I am a member of the Metal Trades Branch of Enterprise Association, Steamfitters Local 638 of the U.A. and have been a member for approximately 5 years; this affidavit is made in opposition to the motion to intervene by Mr. Gunther and others, and in opposition to their claim to represent me and the other white members of the Metal Trades Branch of this Union as part of a class.
- 2. I have over the years acquired more than 5 years of experience as defined by Paragraph 11(a) of the Court Order dated June 21, 1973 and Paragraph 16(c) of the Affirmative Action Plan of March 29, 1974.
- 3. I believe that I can pass the Court approved practical examination; I have not been convicted of a job-related crime within the past five years; I reside within the Union's territorial jurisdiction and I am willing to pay an initiation fee to enter the Construction Branch of the Union.
- 4. I do not want to be represented by Mr. Burton Hall, Mr. John Gunther and the six other individuals named

in his affidavit. I do not think they will adequately represent my interests or those of numerous other white members of the Metal Trades Branch of the Union because their views on what it means to be a Union member are completely different than mine; I trust the Union whereas they do not; I am willing to become a member of the Construction Branch in accordance with the procedures established by the Court, the Administrator and the Union whereas they went to gain admission according to their own timetable; I believe that the seven named individuals are not considering the rights and interests of those white members of the Metal Trades Branch of the Union who have more and far better experience than they have, for example, Mr. John Gunther, I understand, has been a member of the Metal Trades Branch only since August 20, 1971 and therefore does not even qualify under the U.A. Constitution and, I have more faith in the Union, the United States Attorney's Office and Mr. Vincent D. McDonnell, the Administrator, than I do in Mr. Hall; I do not want him to be my attorney.

- 5. I do not think the seven named applicants to intervene are typical of the members of the alleged class for the same reasons that I think they are not adequate representatives of the class.
 - 6. Although I applied for admission to the Con-

struction Branch since the June 21, 1973 Order I understand that under that Order the Union was required to give preference to non-whites for a three-month period, and then under the November 20, 1973 Order until such non-white applications were to be processed first; the Affirmative Action Plan affords all the rights I need and I am confident that those rights will be upheld; no preference should be given to seven impatient men who cannot even wait a few weeks before suing their own Union.

7. While there may be about 500 white members of the Metal Trades Branch who may apply for Construction Branch membership I firmly believe that the vast majority of that group agree with me that Mr. Hall, Mr. Gunther and the other six men will not, cannot and should not represent us. I do not think that there are too many members with Mr. Gunther's view to make it impractical for them to all be named before this Court.

WHEREFORE, deponent prays that the motion to intervene and the motion to proceed as a class action be denied in its entirety.

achiered Vitilo

Sworn to before me this 30th day of April, 1974.

SAMUEL MARSHALL
NOTARY FUBLIC, State of New York
No. 41-7750590, Quality of in Queens Co.
Commission Expires Platch 30, 1976

NOTE: Affidavits similar in form to Mr. VITALO's were submitted, in opposition to the motion, by PATRICK M. CURRAN, JR., JOHN T. McCOOL, and JAMES W. DOUGHERTY. Designated by Appellee Union forinclusion, they are reprinted at pages of this Joint Appendix.

Reply Affidavit of Charles T. Farrell: Portions
Relevant to Motion to Intervene. (Rec. #93)

(Caption Omitted)

(NOTF: Paragraphs Nos. 1 through 10, dealing with the motion to hold defendant Union in contempt, which is not involved in this Appeal, were not designated by Appellants. Designated by Appellee Union, they are reprinted at pages of this Joint Appendix.)

STATE OF NEW YORK) ss.:

CHARLES T. FARRELL, being duly sworn, deposes and says:

affidavit, I would like to point out that the "B" men, such as myself, who are members of the class represented by Applicants to Intervene, are for the most part already employed in the industry as steamfit-

(Reply Affidavit of Charles T. Farrell: Relevant Portions)

ters. Mr. BRENNAN's talk, therefore (paragraphs 4 and 7) of a danger of unemployment through the admission of such workers to membership, and his hint (paragraph 7) of employer-sponsorship thereof, are false and unreal. We, the Applicants to Intervene and members of the class represented by Applicants, are workers in the industry, members of the collective bargaining unit for which Local 638 has been designated exclusive bargaining representative. We demand, on our own part and without any employer sponsorship, that the Union give equal, "A" membership rights to all steamfitters who are members of that bargaining unit. We can easily show -- and defendant Union has in this proceeding, I am advised, already admitted -- that the Union has consistently violated, and continues to violate, its duty under the Labor-Management Relations Act of 1947 to represent fairly, without hostile discrimination, all workers within the bargaining unit. Indeed, the Union's officers state, as their principal reason for refusing us admission to membership, that they do not desire or intend to comply with their duty to represent all workers fairly and equally; they have opely stated and declared their desire and intention to guarantee to "A" members continuous employment at the expense of "B" members, all of whom are members of the bargaining unit.

12. Most emphatically, also, I dispute the suggestions

(Reply Affidavit of Charles T. Farrell: Relevant Portions)

made in paragraph 6 of Mr. BRENNAN's affidavit that the Union's officialdom, in opposing the goals and quotas for racial integration which, according to Mr. BRENNAN, were "imposed" upon the Union by this Court, was in any way representing myself, my fellow Applicants to Intervene, or the class we represent. We, Applicants to Intervene, do not oppose and have not opposed the efforts of plaintiffs and of this Court to end racial discrimination and to bring this Union into conformity with the law. We have no interest in excluding any workers in the steamfitting industry from membership in the Union, nor do we benefit from the racially-discriminatory, exclusionary, exploitive and elitist practices of the Union's incumbent officialdom. In fact, along with the members of the class represented by the Rios kplaintiffs, we have been and continue to be victims of those practices.

paragraph 9 of Mr. BRENNAN's affidavit, that the Administrator who has been appointed by the Court to oversee implementation of the Affirmative Action Plan will effectively enforce it. I note, however, that until the Applicants to Intervene made their application to this Court there was no compliance with and no enforcement of any of the orders of this Court insofar as applicants for membership who are other than non-white and Spanish-surnamed were con-

(Reply Affidavit of Charles T. Farell: Relevant Portions)

after Applicants moved to hold the Union and its officers in contempt for non-compliance, that the Union and/or the Administrator took any steps at all to comply with or bring about compliance with this Court's orders relating to white and non-Spanish-surnamed applicants for membership.

14. Finally, as to the four affidavits -- all ofthem identical, and obviously xerox-copies of each other -- which the Union's counsel prepared and then, later, filled in the names of affiants in ink. The fact that the Union, with all the power it holds over individual workers -- and especially over "B" men, whose jobs and hopes of future employment are at the mercy of the Union's business agents --, was able to find four persons to sign these prepared-in-advance documents far from supports Mr. BRENNAN'S boast that " ... the vast majority of white Metal Trades members do not want to be represented by Mr. Hall or Mr. Gunther ... " If Mr. Brook has been unable to find more than four "B" men who can be coerced into signing such prepared-in-advance documents, then it is obvious that the number of those who do wish to be represented by Applicants to Intervene (and by whatever attorney we select to represent us) is far larger than he or his clients are willing to admit.

(Reply Affidavit of Charles T. Farrell: Relevant Portions)

Charles T. FARRELL

Sworn to before me this

3 day of April, 1974

PURTON H. HALT
Notary Public, State of New Yo
24 1732129 - Quall in Kines Co.
Commission Expires March 30, 197

NOTE: the accompanying affidavit of ROBERT GRAHAM, submitted in reply to the affidavits of of Defendant Union on the two motions, is not reprinted. It can be found, together with the affidavit of CHARLES T. FARRELL, as part of Item #93 in the Record.

Affidavit of John Sheeran: Portions Relevant to Motion

to Intervene

(Rec. #88)

(Caption Omitted)

(Note: The Sheeran Affidavit was submitted in opposition to the motion to hold the Union in contempt, which is not involved in this Appeal. Only paragraphs 9 through 12 were designated by Appellants. The remaining paragraphs, designated by Appellee Union, are reprinted at pages of this Joint Appendix.)

STATE OF NEW YORK)
COUNTY OF NEW YORK)

JOHN J. SHEERAN, being duly sworn, deposes and says:

9. I have been further advised by counsel that

(Affidavit of John Sheeran: Relevant Portions)

by Order filed November 20, 1973, this Court directed that non-white applicants whose applications were submitted on or before October 12, 1973 were to be tested and processed in the order in which their applications were submitted and solely for that purpose the three month period of Paragraph 11 of the June Order was extended to December 31, 1973. I am further advised that this Court directed that all others, upon request be provided with application forms and processed pursuant to Paragraph 12 of the Order provided, that, any non-whites requesting applications on or before October 12, 1973 shall be "given priority in testing and processing over then pending applications made pursuant to Paragraph 12 of the Order and Judgment."

whites who applied up to and including October 12, 1973, and the testing of such individuals made it impracticable to test white applicants during the same time; furthermore, the Union was instructed by the Administrator to proceed forthwith with the testing of non-whites prior to initiating the applications and testing procedures of whites. On January 9, 1974 the testing of non-whites terminated, but was resumed on February 14 and 15, 1974 to test those non-whites who had been unable to take the test on the dates they had been scheduled for because of personal reasons and upon the request of those non-whites to be rescheduled, and those who had questionable experience,

(Affidavit of John Sheeran: Relevant Portions

which upon review by the Union, were determined to have the requisite experience. Induction proceedings were conducted for those who had passed the examination.

- 11. The continued testing of non-whites, which terminated within a few weeks of the effective date of the Affirmative Action Plan, resulted in the Union, after consultation with the Administrator that it would await the adoption of the Affirmative Action Plan before processing whites. One of the reasons for the position taken was to avoid the accusation made in the past by plaintiffs that preference would be given to whites as contrasted to non-whites, or that the procedure would somehow be different for whites than for non-whites.
- 29, 1973 this Court filed and entered an order adopting
 the Affirmative Action Plan. That Plan states, Paragraph
 18, that "the practical examination shall be given weekly,
 or at such intervals as may be approved by the Administrator."
 The Union officers met with the Administrator on April 22,
 1974 with the specific purpose of determining the manner
 and method of processing applicants pursuant to the Affirmative Action Plan. It is my understanding of the Decree
 that had the Union acted other than through the Administrator,
 it would have then been in violation of this Affirmative
 Action Plan.

Order of June 21, 1973: Relevant Portions

NOTE: The Court's Judgement and Order deal with a variety of matters not all relevant to this Appeal. Only paragraphs 11 and 12 have been designated by Appellants.

The entire Judgment and Order, and also the entire Opinion of the Court entered June 21, 1973, have been designated by Appellee Union and are reprinted, in their entirety, at pages of this Joint Appendix.

(Caption Omitted)

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiffs shall have judgment against defendants as follows:

D. TRANSITORY PROVISIONS

Temporary Procedures for Direct Admission to the A Branch

- and for the first 3 months following the adoption by the Court of the practical examination referred to in paragraph 13, infra, -- unless extended by the Court upon application of any of the parties -- Local 638 shall admit as full journeyman members of its A branch only graduates of the apprentice program and non-whites who apply in writing and who meet the following conditions:
 - (a) 4 years' experience which shall include experience obtained in the United States or elsewhere, in Local 638's B branch, or in construction or maintenance plumbing, pipefitting or welding as an employee of a union or non-union contractor, or other employment reasonably related

experience in the Armed Forces and vocational training related to the skills of a journeyman stcamfitter; and either

(b) successful completion of a practical examination administered by a board of three examiners who shall act by majority vote, consisting of the Administrator or his representative, a representative from the union and one chosen by the Administrator

"minority referral sources") or

from either the Recruitment and Training

Program, Inc., or Fight Back (hereinafter

(c) certification by an employer who is a party to the present collective bargaining agreement with Local 638 that such non-white has been performing construction steamfitting work for at least six weeks within the territorial jurisdiction of Local 638 and is a competent steamfitter.

Applicant's criminal record, if any, may not be considered unless an applicant has been convicted of job-related crimes, within five years prior to the date of application.

There shall be no qualifications for membership

(Order of June 21, 1973: Relevant Portions)

in the A branch other than those set forth above, and the payment of an initiation fee as described in paragraph 15.

All disputes with respect to admission of members shall be heard and determined by the Administrator. Any proposed changes in the procedures for admission to the A branch shall be considered by the Administrator, who shall take all steps necessary to ensure equal employment opportunities for non-whites. Any objections to changes in the admissions procedures, if any, instituted by the Administrator shall be resolved by the Court.

in paragraph 11 above, until the effective date of the affirmative action program, Local 638 shall admit as full journeymen members of its A branch whites and non-whites, on a one-for-one basis who meet the conditions set forth in paragraph 11(a) and (b). The number of non-whites admitted under paragraph 11 - up to 250 - shall be includable in this figure. Any proposed changes in these interim procedures shall be considered by the Administrator and approved by the Court.

* * *

Order of November 15/20 1973

(NOTE: Though bearing the signature date November 15, 1973, this Order was entered November 20, 1973. In order to avoid confusion, it is referred to by both dates, i.e.: "November 15/20." The Order is printed here in its entirety.)

(Caption Omitted)

Plaintiffs having moved for an order modifying paragraph 11 of the Order and Judgment of this court entered June 21, 1973 by extending to January 31, 1974 the period provided for therein during which defendant Local 638 was required to admit as full journeymen members of its A Branch only graduates of its apprentice program and non-whites who apply in writing and who meet conditions specified therein; and the said motion having come before the Court for a hearing on November 5, 1973, and the Court having heard argument and reviewed the papers submitted in favor of and in opposition to the said motion, it is hereby

ORDERED that the provisions of paragraph 11 of the Order and Judgment entered herein on June 21, 1973 be modified as follows:

- 1. All non-white applicants whose applications for A Branch membership were submitted to Local 638 on or before October 12, 1973 shall be tested and processed in accordance with said paragraph 11 in the order in which their applications were submitted to Local 638, and solely for that purpose, the 3 months period in paragraph 11. is extended to December 31, 1973.
 - 2. All other persons who request, or have

(Order of November 15/20 1973)

Branch membership shall promptly be provided such forms and shall be tested and processed in accordance with paragraph 12 of the said Order and Judgment in the order in which their applications are submitted to Local 638, provided, however, that any non-white persons who requested Local 638 in writing for an application form on or before October 12, 1973 and who did not submit such form on or before October 12, 1973 shall, upon submission of the completed application form, be given priority in testing and processing over then pending applications made pursuant to paragraph 12 of the Order and Judgment.

Dated: New York, New York November 15, 1973

(sd) DUDLEY B. BONSAL
United States District Judge

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Affirmative Action Plan: Relevant Portions

NOTE: Section B of the Affirmative Action Plan adopted by the Court below by Order of March 29, 1974, dealing with Direct Admission to the A Branch (and comprising Paragraphs 15 through 26), has been designated by Appellants along with Paragraph 29 of the Plan, which comes under the heading "General Provisions." They are printed here.

The remaining portions of the Affirmative Action Plan, dealing with appointment of an Administrator, the setting of integration goals, the Apprenticeship Training Program, Programs for Other Trainees, and General Provisions, are, by designation of Appellees, reprinted at pressof this Joint Appendix.

B. Direct Admission to the A Branch

- 15. All admissions into the Union shall be on the same basis, regardless of race, color or national origin, and the procedures hereinafter set forth in this Section B are for the purpose of achieving the goals hereinbefore set forth in paragraph 3.
- 16. Applicants shall be admitted as full journeyman members of the A Branch if they meet the following conditions:
- (a) are residents of New York City or Massau or Suffolk Counties at the time of application, or of such adjoining areas as may be approved by the Administrator;
- (b) have not been convicted of a job-related crime within five years of the date of application;
- (c) have had four years' experience, including experience obtained in the United States or elsewhere, in the Union's B Brench, or in construction or maintenance

(Affirmative Action Plan: Relevant Portions)

plumbing, pipe fitting or welding, or other employment reasonably related or similar to steamfitting work, including experience in the Armed Forces and vocational training related to the skills of a journeyman steamfitter;

- (d) have successfully completed a Court Approved
 Practical Examination administered by a Board of three
 Examiners as hereinafter provided in paragraph 19.
- in a form approved by the Administrator, may be secured from the Union by request in writing. Each applicant (including all persons who, prior to the effective date hereof, requested an application form from Local 638 for A Branch membership pursuant to paragraph 12 of the Order and Judgment herein dated June 21, 1973 and the Order herein dated November 15, 1973) will be scheduled for the Court Approved Fractical Examination upon verification of his qualifications as set forth above in subparagraphs (a), (b) and (c) of paragraph 16, and upon payment of a Practical Examination filling fee of \$25 or such different amount as may be fixed by the Administrator.
- 18. In order to meet the annual goals set forth in paragraph 3, the Practical Examination shall be given

weekly, or at such other intervals as may be approved by the Administrator. Every effort shall be made to test applicants in the order in which they submitted their applications, including those who have applied since June 21, 1973. However, in selecting the order in which non-whites and whites are scheduled to take the examination, the Union, with the approval of the Administrator, may select emongst non-whites and separately from amongst whites in regard to the relative quantity and quality of experience as defined in subparagraph 16(c).

The Union shall send a certified letter to each scheduled applicant at least two weeks prior to the date of the examination, setting forth the time and place thereof and a brief description of the nature of the examination and the kind of tasks to be performed, with a copy of such letter to the Administrator.

- 19. The Board of Examiners shall consist of three members: the Administrator or his representative, a representative from the Union and a representative selected by the Administrator from the non-white community. The Board of Examiners shall act by majority vote.
- 20. The Board of Examiners shall determine the results of each examination, and applicants shall be advised

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(Affirmative Action Plan: Relevant Portions)

by the Union of such results by first class mail within 20 days from the date of the examination. The results of the examination shall be kept on file by the Administrator.

- 21. Each applicant who fails the Practical Examination shall be afforded the opportunity to take a second examination after six months. The Union, ECA and JAC shall not cause any such applicant to suffer loss of employment or work status as a result of any such failure.
- the applicants pursuant to paragraph 20, the Union shall accord full journeymen status and issue temperary membership cards in the A Branch to all applicants who passed the examination. Following issuance of such temporary membership cards, the applicant shall commence payment to the Union, of an initiation fee in the amount of \$800, payable over a period not to exceed eight months. When the applicant has paid his initiation fee, the Union shall promptly issue him a permanent membership book.
- 23. If the Administrator shall determine that the winisum annual goals set forth in paragraph 3 may not be met through the Practical Examination, the Apprenticeship Program and the Programs for other Trainees, he may require direct admission of non-whites to the A branch by certi-

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(Affirmative Action Plan: Relevant Portions)

fication in such manner and on such terms as he may determine and as may be approved by the Court.

24. Nothing herein contained shall preclude the Union from receiving members in good stending of other Locals of the UA as members of the Union, provided that admission of any such person to the A Branch shall be governed by this Section B.

The Union in its organizational campaigns shall act in a nondiscriminatory fashion and shall consult with the Administrator concerning the application of the requirements of the Affirmative Action Plan to employees of newly organized employers, and after being organized, such employees shall be counted as members for purposes of paragraph 4.

- 25. There shall be no qualifications for direct admission to the A Branch other than those specified in paragraphs 15-24 above, and all admission procedures shall be approved by the Administrator.
- above shall in no way preclude the admission of reasonable numbers of skilled whites to the Union's A Franch. To ensure the schievement of the minimum annual goals set forth in paragraph 3 above, the Union with the approval of the Administrator may, if there are too many qualified

(Affirmative Action Plan: Relevant Portions)

applicants in relation to the available work, limit and fix temporary ratios (white and non-white) for the admission of new members to the A Branch.

III. GHIERAL PROVISIONS

29. The appropriate parties shall in good faith attempt to resolve all disputes erising hereunder relating to the Apprenticeship Training Program, Direct Admissions to the A Branch and Programs for Other Trainces. Unresolved disputes shall be referred to the Administrator to hear and determine.

II. MATERIALS DESIGNATED BY APPELLEES

Opinion, Judgement and Order of June 21, 1973

(Rec. #)

(Caption Omitted)

BONSAL, District Judge:—This is an action brought by the Attorney General of the United States under Title VII of the Civil Rights Act of 1964 ("Title VII") (42 U.S.C. §§ 2000e et seq.) pursuant to authority granted to the Attorney General in that Act (42 U.S.C. § 2000e-6(a)). The defendants are four local unions in the building trades industry servicing metropolitan New York, and their

counterpart Joint Apprenticeship Committees and employee associations. Separate trials were ordered for each local union and its counterparts. See, e.g., the case involving Local 40, United States v. Local 638, Enterprise Association, etc., et al. 347 F.Supp. 169, 4 FEP Cases 1009 (S.D.N.Y. 1972) (Gurfein, J.).

In the case of Local 638, Enterprise Association of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Compressed Air. Ice Machine, Air Conditioning and General Pipefitters (hereinafter "Local 638 government's action (United States v. Local 638, et al., 71 Civ. 2877; was consolidated for purposes of trial with a private action (Rios v. Enterprise Association, etc. Local Union =638, et al., 71 Civ. 847) which had been instituted by four "nonwhites" !-- allegedly the victims of vilawful employment discrimination-sgainst Local 638, the Mechanical Contractors' Association (MCA), and the Steamfit-ting Industry's Joint Apprenticeship Committee (JAC). By order of Judge Tenney, the private action has proceeded as a class action on behalf of two distinct classes: a) all Negro and Spanish-surnamed Americans residing in New York City and the Counties of Suffolk and Nassau in the State of New York who now or at any time in the future have the skills necessary to work as journeymen steamfitters; and b) all Negro and Spanish-surnamed Americans residing in New York City and the Counties of Suffolk and Nassau in the State of New York who now or at any time in the State of New York who now or at any time in the future are capable of learning such skills and who wish to obtain access to steamfitting work in New York City and said Counties.2

A trial of the consolidated action commenced on January 15. concluded on January 26, 1973. Decision was reserved, and the parties have submitted Proposed Findings of Fact, Conclusions of Law, and supporting Post Trial Memoranda.

The Complaint

A. The Government Action (United States v. Local 638, etc., et al., 71 Civ. 2377)

Named as defendants in the government action are Local 638, MCA.

and JAC. MCA is named as a defendant "for purposes of relief only pursuant to Rule 19(a)(1) of the Federal Rules of Civil Procedure." The complaint alleges that Local 638 is engaged in a pattern and practice of resistance to the full enjoyment by nonwhites of rights secured to them by Title VII of the Civil Rights Act 3

"(a) [flailing at i refusing to admit nonwhite workmen into . . [Local 639] as journeymen members on the same basis as whites are admitted; "(b) [flailing and refusing to refer nonwhite workmen for employment with-

nonwhite workmen for employment within [its jurisdiction] on the same basis
as whites are referred by applying
standards for referral which have the
purpose and effect of ensuring referral
priority to . . A Branch members,
nearly all of whom are white, thereby
perpetuating the effects of [its] past
discrimination:

perpetuating the effects of [its] past discrimination;

"(c) [f]ailing and refusing to recruit blacks for membership in and employment through... [Local 638] on the same basis as whites are recruited;

"(d) [f]ailing and refusing to permit contractors with whom... [Local 638 has] collective bargaining agreements to fulfill the affirmative action obligations imposed upon those contractors by Executive Order 11246 by refusing to referout blacks whom such contractors wish to employ: to employ

"(e) [flailing and refusing to take reasonable steps to make known to non-white workmen the opportunities for employment in the . . . [steamfitting trade] ployment in the . [steamfitting trade] or otherwise to take affirmative action to overcome the effects of past racially discriminatory policies and prac-

The complaint alleges that JAC also is engaged in a pattern and practice of resistance to the full en-joyment by nonwhites of rights secured to them by Title VII by:

"(a) [F]ailing and refusing to make information concerning apprenticeship opportunities available to non-whites on the same basis as it is made available

to whites:
"(b) [f]ailing and refusing to apprenticeship opportunities available to non-whites on the same basis as they are made available to whites by giving

are made available to whites by giving a preference in the selection of apprentices to friends and relatives of union members, nearly all of whom are white; "(c) [a]dopting standards for the selection of apprentices which are not job related and which operate to disqualify a disproportionate number of non-white applicants for apprenticeship."

B. The Rios Action (Rios, et al. v. Enterprise Association Steamfitters Local Union =638, etc., 71 Civ. 847) This class action was brought by

¹ The term "nonwhites" as used in this Opinion refers to black and Spanish-surnamed individuals.

2 See Memorandum filed in Rios v. Enterprise Association Steamfitters Local Union ### 638, 3 FEP Cases 897, 71 Civ. 847 (S.D.N.Y. August 10, 1971) (Tenney, J.).

^{3 42} U.S.C. § 2000e-2(c) and § 2000e-2(d).

four nonwhites on behalf of non-whites who have, or are capable of learning, the skills necessary to work as journeymen steamfitters within the jurisdiction of Local 638. The complaint names as defendants Local 638, MCA, and JAC, and alleges that the three defendants in concert have failed to admit plaintiffs to membership in the A Branch of Local 638 journeymen and to participation in the JAC apprenticeship program on the same basis as whites, and that the defendants have failed to provide nonwhite A Branch members with equal access to job opportunities as journeymen steamfitters. Plaintiffs sue under the Fifth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. \$\$ 1981 and 1983, and Title VII.

Defendant MCA has moved to dismiss the Rios complaint against it on the grounds that it is neither an "employer" within the meaning of 42 U.S.C. § 2000e-2(a) nor an "employment agency" within the meaning of § 2000e-2(b), and that the complaint fails to state a cause of action against it. Plaintiffs oppose MCA's motion.

Background Facts

1. Local 638 is a labor union whose territorial jurisdiction consists of the five boroughs of the City of New York and Nassau and Suffolk counties.

2. Local 638 is a member of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry. ("United Association").

 Local 638 represents its members in collective bargaining with defendant MCA and other steamfitter contractors.

4. Local 638 has two branches: a construction or A Branch, whose members have the status of journeymen and do mainly construction work: and a metal trades or B Branch, whose members work in shops and do repair work.

5. Since 1960, the journeyman membership of the A Branch has been as follows:

Year	Total Members	Blacks	Spanish- surnamed
1960	3644	0	0
1961	3587	Ö	ő
1962	3541	Ö	Ŏ
1963	3528	0	o ·
1964	3598	0	ő
1965	3541	0	Õ
1966	3549	0	Ô
1967	3646	5	2
1968	3322	5	2
1969	3866	14	7
1970	3827	14	i
1971	3850	21	10
1972	4198*	129	62

Computed from the stipulated number of members in 1971 plus the stipulated number of additional members during 1972

[B BRANCH MEMBERS]

6. Since 1960, the number of members of the B Branch has been as follows:

Year	Total Members	Blacks	Spanish- surnamed
1960	2220		
1961	2337		
1962	2545		
1963	2657		
1964	2847		
1965	2809		
1966	2875		
1967	2774		
1968	2866		
1969	3335		
1970	3656		
1971	3862	300*	200 *

Approximate. Figures were not available for prior years.

7. As of September, 1971, at least 399 (11%) of the A Branch members were related by blood or marriage to other members of the union; it is common for relatives to be working on the same job site.

8. Members of the A Branch have a higher hourly rate of pay than members of the B Branch. Being a member of the A Branch is a substantial aid in obtaining a job as a construction steamfitter in the territorial jurisdiction of Local 638 and is a prerequisite to obtaining job security and preventing early layoffs. Another advantage of A Branch membership is the greater opportunity for advancement and for earning overtime pay.

9. Workers in the construction steamfitting industry are engaged in the installation of refrigeration, air conditioning, heating, ventilating,

^{*}The complaint sets forth that *[p]laintiffs Rios, Jenkins, and Lewis are fully qualified steamfitters whom the Union [Local 638] refuses to refer for work and to admit to membership. Plaintiff Ruiledge has been denied admission to the apprenticeship program operated by the Defendants even thousing the is intelligent, able-bodied and fully capable of doing steamfitting work if given reasonable training."

sonable training."

See Rios v. Enterprise Association Steamfitters Local Union No. 638, 526 F Supp. 198,
3 FEP Cases 570 (S.D.N.Y. 1971) (Frankel, J.) (decision on motion of plaintiffs for a preliminary injunction.

pneumatic tube, and sprinkler systems in office buildings, apartment houses, power plants, and other large structures. It is the job of steamfitters on these construction sites to connect the various pipes, pumps, ducts, fixtures, and valves that these systems require. It is necessary for a steamfitter to know how to measure, cut, thread, and connect pipe. In addition, it is necessary that at least some of the steamfitters on a tob site know how to weld pipe "in position." Since incompetent work may necessitate redoing the job or may endanger fellow workers or future occupants of the structure, steamfitters must know and follow recognized safety procedures.

10. MCA is a trade association of approximately 60 heating, ventilating, and air conditioning contractors in the New York area. While the total number of contractors employing steamfitters exceeds 300, the MCA members employ the major share of the steamfitter labor force. MCA represents its members in collective bargaining negotiations and other labor relations matters with Local 638.

[EDUCATIONAL FUND]

11. Pursuant to a 1960 Declaration of Trust, the Steamfitters Industry Educational Fund was created, with a Board of Trustees, four of whom are chosen by Local 638 and four by MCA. The trustees appoint JAC, a joint labor-management committee of eight members.

12. All of the present and past officers and business agents of Local 638 are white. All of the present and past officers of MCA are white. Since its formation, all members and employees of JAC have been white.

13. In 1972, the nonwhite membership of the A Branch (191 membership of the A Branch (191 membership of the A Branch, According to 1970 census figures, the related population statistics for the seven counties within the jurisdiction of Local 638% are as follows: Black and Puerto Rican persons constitute 25.09% of the total population of the seven counties; black persons and persons reporting the Spanish language as their mother tongue constitute 30.06% of the total

population of the seven counties.

14. Each applicant for membership in the A Branch must have at least five years of practical working experience in the plumbing and pipefitting industry and must be of good moral character. In some instances, these requirements have not been strictly adhered to.⁷

[PROCEDURE]

15. Procedurally, applicants to the A Branch send letters to the union stating their qualifications, which letters are reviewed by a committee composed of three of the union's officers. These applications are kept on file and when additional members are needed—a determination which is based upon the demand for labor—applicants are called down, interviewed, and if they have the necessary qualifications, accepted.

16. The steamfitting industry is subject to fluctuations and cyclical unemployment. During the years from 1960 to 1969, the total dollar value of all steamfitting contracts awarded to members of MCA to be performed within New York City and Nassau and Suffolk counties was as follows:

\$ 88,630,736
92,464,643
104,869.893
99.095.020
94.227.895
77,570,242
93,103,58
95,759,129
107,966,466
118,990,480

17. In the post-war era, there has been a shortage of construction steamfitters in the New York area as well as a shortage of welders. Employers have been required to expand substantial monies for overtime. A computer study of overtime hours from 1967 to 1971 indicates the following:

Year	overtime hours *	Average per week		
1967	481,967	2.47		
1968	432,206	2.97		
1969	453,807	2.96		
1970	541,195	3.55		
1971	724,172	3.67		

The term "overtime hours" includes both hours worked in excess of the normal 7-hour day and also hours worked outside of the usual work schedule, from 8:00 a.m. to 3:30 p.m.

⁶ Local 638's jurisdiction covers the following counties Bronx, Kings, Nassau, New York, Queens, Richmond, and Suffolk. The population figures are taken from U.S. Department of Commerce, Bureau of the Census, Census of Population, General Social and Economic Characteristics, New York, (PC(1)-C34 N.Y.) (1970).

For example, the evidence at trial disclosed that The ideus Kryjak became a member of the Armondon inch of Local 638 through the sponsorship his father-in-law after about three years experience; Frederick Cruter

18. By reason of the shortage of manpower, Local 638 has referred B Branch men to work as construction steamfitters.

19. Local 638's application procedures are designed to keep the A Branch from being flooded, by admission of only a small number of new A Branch members, which tends to continue the shortage of A men and tends to give them job security and overtime.

20. Local 638 does not maintain a hiring hall, nor does it keep formal records of available jobs or of unemployed steamfitters who are seeking work within its territorial jurisdiction. The general practice is for steamfitting contractors to maintain steady crews, which are moved from job to job as work on new contracts begins and old contracts are completed. Hiring of men in addition to the steady crews is done directly by some contractors; other contractors hire men through their superintendents and in fewer instances through their foremen.

REFERRAL

21. There is no formal method of referring workers for employment in the steamfitting industry in the New York area. Information concerning available employment is circulated informally by word of mouth and other means. Steamfitters seek work primarily by contacting A Branch members of Local 638, employers foremen and superintendents, and occasionally officers and agents of Local 638. Employers seek steamfitters by contacting members of Local 638 through their superintendents and foremen, and by contacting Local 638 and MCA.

638 and MCA.

22. JAC conducts a 5-year apprenticeship training program consisting of a total of 720 hours of classroom work at the Delehanty Institute and Voorhees Technical Institute and 9100 hours of employment with steamfitter employers at construction sites. Upon successful completion of the program, an apprentice becomes a journeyman member of the A Branch. The apprenticeship program was designed and developed by the United Association and the Mechanical Contractors Association of America in consultation with the United States Department of Labor, Bureau of Apprenticeship and Training. The

became a member of the A Branch after about two years as a helper: Frank Catapano transferred to the A Branch from B Branch after 4 years of experience. national program has been registered with the New York State Department of Labor.

23. Apprentices are paid a percentage of a journeyman's wages according to the following schedule:

In addition, apprentices receive fringe benefits. The collective bargaining agreement also requires contractors to pay apprentices for five of the seven hours of class which apprentices attend once every other week, with some members of MCA voluntarily paying apprentices for the full 7-hour work day.

24. The first apprenticeship class was formed by JAC on December 15, 1947. As of July 19, 1971 (after the most recent class was indentured) 973 of the journeymen members of the A Branch had at some time been enrolled in the apprenticeship program. This number constitutes less than 25% of the total membership of the A Branch at present, though the percentage of members of the A Branch who are graduates of the apprenticeship program is increasing.

25. Prior to 1964, apprenticeship applicants were selected on the basis of a personal interview conducted by members of JAC and there was no formal method of announcing the formation of new apprenticeship classes. No nonwhites became apprentices prior to 1964.

[EXAMINATION]

26. JAC instituted a written aptitude examination as part of the apprenticeship program selection procedure in 1964. In that year, JAC, with the advice of New York University, was responsible for the selection of the tests and the determination of the passing score. There were no classes indentured in 1965 and 1966. In 1967, 1968, 1969, 1970, and 1971. JAC, with the advice of the Stever's Institute of Technology, was reponsible for the selection of the tests and determination of the passing score. The written aptitude examination was in four parts: 1) Verbal Meaning (the ability to understand ideas in words); 2) Numerical ability (the ability to work with numbers and handle simple quantitative problems); 3) Mechanical reasoning (the ability to understand and apply basic mechanical

principles); and 4) Spatial relations (the ability to unlike objects in 3-dimensional sp. 2).

27. In 1964, i.s applicant was refused admission to the program on the basis of his test scores. Since 1967 the test results have been as follows: Of the 1177 white applicants who have taken a written examination, 487 (41. 37%) passed; of the 106 black applicants, 11 (10.37%) passed; and of the 18 Spanish-surnamed applicants, 2 (11.11%) passed.

28. Since 1966, applicants have been required to furnish: 1) a high school or equivalency diploma; 2) evidence that they are between 18 and 24 years of age, with an allowance for military service up to the age of 28; 3) a listing of arrests and the out-

The parties stipulated to the following breakdown of the test scores:

come of each, except for minor traffic violations; 4) evidence of residency in the New York metropolitan area for three years (reduced to one year in 1968); 5) sponsorship by a member of the A Branch; and are required to undergo a physical examination by a doctor selected by JAC. Applicants were also given an oral interview by members of the JAC to orient them to the apprenticeship program, but there is no evidence that admission to the apprenticeship program has been denied solely on the basis of the oral interview.

29. Since the filing of the Rios action in 1971, JAC has modified its standards for admission to the apprenticeship program.

[REQUIREMENTS PROPOSED]

30. With respect to the class to be

Date	Test	Passing Score	# White Applicants Taking Test	# (%) Whites Passed	# Black Applicants Taking Test	# (%) Blucks Pussed	# Spanish Surnamed Taking Test	# (%) Spanish Surnamed Passed
4/4/67	Differential Aptitude, Form M—Verbal Reason- ing, Numerical Ability, Mechanical Reasoning and Space Relation Tests	50% or higher	173	41(23.69%)	11	2(18.18%)		0
12/16/67	Scat 2A. Multiple Apti- tude Tests, Applied Science and Mechanics, Spatial Relations IID	50% or higher	188	44(23.40%)	31	1(3.22%)	7	1(14.2%)
7/20/68	Scat 2B, Atkins Spatial I and II, Survey of Mechanical, Insight	50% or 1 higher	137	37(27%)	25	1(4.0%)	4	1(25.0%)
1/25/69	Henmon-Nelson Form B. Bennett Mechanical. Atkins Special	25% or 2 higher	157	100(63.69%)	16	2(12.5%)	3	0
1/31/70	Scat 2B Parts II and III. Bennett Mechanical Form T. Minnesota Paper Form Board AA	25% or higher	202	107(52.97%)	16	3(18.75%)	0	0
11/21/70	Bennett Mechanical Form S Multiple Apti- tude Test—#8 Two Dimensions Differential Aptitude Test—Form in Verbal and Numerical	25% or higher	320	158(49.37%)	7	2(28.57%)	1	0
Totals			117	487(41.37%) 3	106	11(10.37%)	18	2(11.11%)

In addition, eleven other applicants were offered admission to the program. Eight of these eleven were chosen on the basis of their cumulative score for all four parts of the exam, from amonest those who had achieved a score of 40th percentile or higher in each of the four components. In addition, three other individuals who had achieved a score of 30th percentile or higher in all four components were invited into the program. Consequently, 45 of the 137 white applicants (32.84%) and 4 of the 25 black applicants (16.77) were invited into the program. For effect of this on overall total see footnore 3.

In addition, fifteen other applicants were offered admission to the program. Thirteen of these fifteen were chosen on the basis of their cumulative score for all four parts of the exam, from amonest those who failed the examination. In addition, Messrs, Bright and Thomas were invited into the program. Consequently, 94 of the 157 white applicants (39.87%). 5 of the 16 black applicants (31.25%) and 2 of the 3 Spanish surnamed applicants (66.66%) were invited into the program. For effect of this on overall total see footnote 3.

Since additional persons were invited into the program (see footnote 3 and 2), of the 1177 white applicants taking the test 17 (15.03%) were invited into the program, of the 106 black applicants taking the test 4 (22.22%) were invited into the program, and of the 18 Spanish surnamed applicants taking the test 4 (22.22%) were invited into the program.

indentured in 1973. JAC proposes the following requirements: 1) that the applicant take and pass one of the tests (S-61R) of the General Aptitude Test Battery (GATB) of the United States Training and Employment Service: 2) that the applicant be between the ages of 18 and 24 (with credit for military service up to the age of 28); 3) that the applicant have a high school or equivalency diploma; and 4) that the applicant demonstrate physical capacity to do the work. In addition, the JAC proposes to conduct an interview of applicants and at such time to inquire about each applicant's motivation, education, work history, health, and family background, though at the time of the trial, no format for the interview had been determined.

31. As of July 9, 1971, there were 400 participants in the apprenticeship program of whom 12 (2.94%) were black and 4 (0.98%) were Spanishsurnamed. In June 1972, 32 apprentices (all of them white) graduated from the program; currently there are 376 participants in the apprenticeship program of whom 12 (3.19%) are black and 4 (1.06%) are Spanish-

surnamed.

32. Since 1964, 492 apprentices have been indentured of whom 464 (943%) were white, 23 (4.67%) were black, and 5 (1.01%) were Spanish-surnamed, as follows:

	a, ao 10.	10 11 3.		
	White	Black	Spanish- surnamed	Total
1964	47	7	1	55
1963	0	0	ô	0
1966	0	0	ŏ	ñ
1967	43	2	Ŏ	45
1968	86	5	2	93
1969	94	5	2	101
1970	94	2	ō	96
1971	100	2	0	102
1972	0	0	0	0
Totals	464	23	5	492

33. Of the 492 apprentices who have been indentured since 1964, 31 whites (6.7%) and 7 nonwhites (25%) had dropped out of the program by the end of 1971.

34. MCA, in its collective bargaining negotiations in 1966 and 1969, proposed to amend the previous agreements to require the indenturing into the industry of a minimum of 150 new

apprentices annually, which proposals were not incorporated in the resulting collective bargaining agreements. The union's stated reason for rejection of such proposals was to ensure reasonably continuous employment opportunities for apprentices as required by the New York State Department of Labor, Bureau of Apprenticeship Training.

[NEW YORK PLAN]

35. The principal affirmative action taken by Local 638 and JAC to increase nonwhite participation in the steamfitting industry has been its participation in the New York Plan since its inception in 1971. The New York Plan is a joint effort of the construction industry. New York City, and New York State to increase the participation of minority employees in the construction industry. The Plan's goal has been to recruit and place in jobs 800 minority trainees who are above the age of enrollment in the various apprenticeship programs in the construction industry.

36. Of the 800 trainee positions, 90 "slots" were allocated to Local 633, which placed 81 trainees. Currently, 86 trainees are actively employed. The qualifications of those trainees are assumed by representatives of Local 638. MCA, and a minority group representative of the Plan. Some of the Local 638 trainees have receives advance placement and, consequently, receive the wages of more

advanced apprentices.

37. The New York Plan has not been an unqualified success Trainees are not told that they will automatically become members of the A Brancg when they complete the program, and only one nonwhite has become an A Branch member. In January, 1973. New York City withdrew from the Plan on the grounds that the small number of trainees placed was unacceptable.

38. In the past, Local 638 has discriminated against minority workmen in admitting members to the A Branch. There were no nonwhite journeymen members of the A Branch until 1967. Since 1967, only five nonwhites have become journeyman members of the A Branch through the apprentice program.

Discrimination in Admission to the A Branch

In issuing the preliminary injunction of January 3, 1972 (in the Government action), this Court found that Local 638 had discriminated

A During the pendency of this action. JAC conducted interviews of approximately 1400 apprenticeship applicants for the 1973 class. The Court was advised that based on the information obtained at the interviews and on the results of the written examination, the applicants were ranked from "1" to "1400". The parties propose that selections be made from this list.

against nonwhites in admissions to the A Branch. Both the admission figures for 1972 and the membership and population statistics indicate that discriminatory practices have not been corrected.

Since January 1, 1972, 160 black and Spanish-surnamed workers already employed in the steamfitting industry were admitted to full journeyman status in the A Branch: this number represents 154 of the 169 workers whose admission was directed by Order of this Court dated January 3, 1972, and 6 who were admitted pursuant to agreement between the Government and Local 638. Other than as a result of this Order, no nonwhites were admitted to the A Branch in 1972. On the other hand, 156 whites were admitted to the A Branch without completing the apprenticeship program and without taking either a written or a practical examination, and an additional 32 whites were admitted to the A Branch through the apprenticeship program. This practice of admitting whites by informal standards and without reference to the apprenticeship program while denying such admission to nonwhites is discriminatory and unlawful. See United States v. Bethlehem Steel Corporation, 446 F.2d 652, 3 FEP Cases 589 (2d Cir. 1971).

[STATISTICS]

The membership and population statistics also suggest that Local 638 has engaged in a pattern and practice of discrimination against non-whites. The present membership of the A Branch of Local 638 is 4.5% nonwhite, while the population of New York City and Nassau and Suffolk Counties, according to available 1970 census statistics, is approximately 25.09% to 30.06% nonwhite. These figures and the testimony at trial support the prima facie showing of discriminatory conduct made by the Government at the time of the issuance of this Court's preliminary injunction. See United States v. Wood, Wire and Metal Lathers International Union, Local No. 46, 471 F.2d 408, 414 n. 11, 5 FEP cases 318 (2d Cir., cert. denied, 41 LW 3643, 5 FEP Cases 1122 (U.S. June 11, 1973); Parham v. Southwestern Bell Teiephone Co., 433 F.2d 421, 426, 2 FEP Cases 1017 (8th Cir. 1970) and cases cited therein; Jones v. Lee Way Motor Freight, Inc., 431 F.2d 245, 247, 2 FEP Cases 895 (10th Cir. 1970); United States v. Hayes International Corp., 415 F.2d 1638, 1043, 2 FEP Cases 67 (5th Cir. 1969). Cf.

Stone v. F.C.C., 466 F.2d 316, 332 (D.C. Cir. 1972): Roberts v. St. Louis Southwestern Ry., 329 F.Supp. 973, 977, 3 FEP Cases 820 (N.D. Ark. 1971).

It is not necessary to determine whether Local 638 has purposefully discriminated in admissions to the A Branch in order to find its practices unlawful. As the Supreme Court declared in Griggs v. Duke Power Co., 401 U.S. 424, 432, 3 FEP Cases 175, (1971):

"[G]ood intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability."

See also Chance v. Board of Examiners, 458 F.2d 1167, 1175-78, 4 FEP Cases 596 (2d Cir. 1972), aff'g 330 F. Supp. 203, 223, 3 FEP Cases 672 (S.D. N.Y. 1971).

In light of the foregoing, the Court finds that Local 638, in the past and continuing to the present, has engaged in a pattern and practice of discrimination against nonwhites in admission to the A Branch.

Under Title VII, district courts have been vested with broad power to grant affirmative relief to combat the often subtle practices of discrimination. United States v. Wood, Wire and Metal Lathers International Union, Local No. 46, supra at 413 & n.9. The evidence at trial, including the testimony as to various Armed Forces programs for training men in basic plumbing and steamfitting skills. Satisfies the Court that the basic skills of the steamfitting trade can be readily taught to nonwhites. Moreover, the history of past discrimination makes it imperative that nonwhite workmen should be admitted to the A Branch as soon as they can demonstrate that they have the necessary skills. Certainly, graduates of the apprenticeship program should qualify for admission to the A Branch as soon as they complete the program. But in addition, a way should be devised to admit others who have experience in

In There was testimony at the trial that the United States Navy conducts a training program for utilities men covering the basic skills of piperitting, plumbing, boiler operation, water treatment sanitation, refrigeration, and air conditioning. The course termed the "A School") includes both classroom and practical instruction and lasts 14 weeks. Afterwards, the men receive ratinus as designated utilities men, and they are sent out to work with naval construction battalion for further "on the job training" for a period of approximately 2 years. In addition, the Navy maintains a school (the "B School") for more advanced training.

the trade and who demonstrate, by means of a practical examination, that they possess the skills necessary to work as journeymen steamfitters.

Discrimination in Work Referral

The general practice in the steamfitting industry is for contractors to maintain steady crews of men, which are shifted from site to site as con-struction needs change. When addi-tional men are needed, site foremen or superintendents generally hire men from among those who apply for work by visiting the sites and con-tacting the foreman. Steamfitters learn of openings by contacting A Branch members who are working on sites needing men or who hear of openings; occasionally they seek the help of Local 638's business agents or officers.

Local 638, however, does not maintain a hiring hall, nor is there any formal referral mechanism or service in the industry in New York City Local 638 does not keep formal records of available jobs nor of steamfitters seeking work. The foreman and on-site superintendents, who occasionally hire steamfitters to supplement their regular crews, are for the most part white,11 and, as the evidence at trial indicated, many present or former members of the A Branch of Local 638. In addition, at least 11% of the members of the A Branch as of the commencement of the present actions are related by blood or marriage to other members of the union.

While there is no evidence that either Local 638 or MCA has engaged in purposeful discrimination against nonwhites, 12 the conditions of the industry set forth above, in combination with the history of discrimination in admissions to the A Branch of Local 638, give whites advantages in obtaining employment. The result is the preservation of the effects of past discrimination. Accordingly, the referral practices of the steamfitting industry must be modified if past discriminatory patterns are to be cor-rected. See United States v. Local 633. Enterprise Association, etc., et al. 347 F.Supp. 169, 180-81, 4 FEP Cases 1009 (S.D.N.Y. 1972) (Gurfein, J.), and cases cited therein.

This Court has broad power under This Court has broad power under Title VII to grant affirmative relief to correct the subtle and elusive patterns of discrimination. Cf. Morrow v. Crisler, 5 FEP Cases 934, 41 LW 2383-89 (5th Cir. April 18, 1973). A first step should be to require that Local 638 and MCA maintain up to date records of jobs available ¹³ and of steamfitters seeking work. These records should be open to all interested parties, including employers. MCA. parties, including employers, MCA, union business agents and officers, individual steamfitters, and "minority referral services." If In addition, the Administrator to be appointed hereunder, after studying the indusry, will consider and recommend to the Court the adoption of other affirmative action measures to increase nonwhite participation in the steamfitting industry

Discrimination in the Apprenticeship Program

The present apprenticeship program conducted by JAC requires that an apprentice complete five years of training consisting of 720 hours of classroom work and 9.100 hours of onthe-job experience before he may become a journeyman member of the A Branch of Local 638. According to testimony at the trial, the present program was designed in consultation with the United Association and the Mechanical Contractors Association of America and is registered with the United States Department of Labor and the New York State Department of Labor.

For the reasons below, however, the Court finds that the present apprenticeship program does not fully meet the requirements of Title VII. Accordingly, the program will be altered as described below and will be subject to further alteration, upon the recomfurther alteration upon the recom-mendation of the Administrator to be appointed hereunder.

In determining whether the ap-

¹¹ The evidence indicates that at the time of the trial, there were two nonwhite employers and two nonwhite foremen in the New York area. The evidence also discless that all of the present officers and business agents of Local 638 and all the oficers of MCA are white.

12 Compare the situation found to exist in the metallic lathing, furning, and concrete reinforcing trade, where Judge Frankel found in numerous specific instances that favoritism for whites and discrimination against blacks had been proven United States v. Wood, Wire and Metal Lathers International Union, Local Union 40, 203 F Supp. 429, 426-438, 3 FEP Cases 457, 634 (SDNY 1971), aff'd, 471 F 2d 408, 5 FEP Cases 313 (2d Cir.), cert. denied, 5 FEP Cases 1122, 41 LW 3643 (U.S. June 11, 1973).

with Local 633, which is now maintained by the union and is furnished to union members, will serve as a starting point. By itself, however, this list is insufficient to inform steamfitters looking for work of which contractors have job opportunities available. 14 Eg., the Recruitment and Training Program, Inc. (formerly the Joint Apprenticeship Program of the Workers Defense League).

prenticeship program meets Title VII requirements, the starting point is Griggs v. Duke Power Co., 401 U.S. 424, 3 FEP Cases 175 (1971):

"The [Civil Rights] Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited."

The initial question is whether plaintiffs have established that features of the apprenticeship program have a sufficiently discriminatory impact on nonwhite applicants to impose upon the defendants the burden of establishing "job relatedness." Plaintiffs must show that the program disadvantages nonwhites to a "significant and substantial" degree Chance v. Board of Examiners, 458 F.2d 1167, 1175, 4 FEP Cases 596, 602 (2d Cir. 1972). If plaintiffs make such a showing, then defendants must demonstrate that the practice is ustified notwithstanding its discriminatory effect. Chance v. Board of Examiners, supra. This involves demonstrating both a "business necessity" for the practice and also that its legitimate ends cannot be served by a reasonably available alternative system with less discriminatory effects. See United States v. Bethlehem Steel Corp., 446 F.2d 652, 662, 3 FEP Cases 589 (2d Cir. 1971). The requirements of these cases apply with respect to both the method for selecting apprentices and the length and content of the program.

A. Selection of Apprentices

The first apprenticeship class was formed by JAC in 1947. Until 1964, there were no nonwhites in the program. Since 1964, 492 apprentices have begun training, of whom 464 (94.3%) were white, 23 (4.6%) were black, and 5(1.01%) were Spanish-surnamed. In 1971 (when the last apprentice class was formed), nonwhites constituted approximately 3.9% of the total number of participants in the apprenticeship program. Population statistics from the 1970 census indicate that nonwhites constitute approximately 25.09% to 30.06% of the total population of New York City and Nassau and Suffolk Counties. This is sufficient to indicate a prima facie case of discrimination against nonwhites in the selection of apprentices. See United States v. Wood, Wire and Metal Lathers International Union,

Local No. 46, supra at 414 n.11; Parham v. Southwestern Bell Telephone Co., 433 F.2d 421, 426, 2 FEP Cases 1017 (8th Cit. 1970), and cases cited therein. Therefore, the burden is on the defendants to show that the features of the present selection system are justified, notwithstanding the discriminatory impact on nonwhites.

1. The Written Examination

The stipulated results of the written tests given to apprenticeship applicants since 1967 (but not including the tests given in 1973) indicate that they have had a differential impact on nonwhites when compared with the results for whites. While the passage rate for whites was 41.37%, the passage rate for blacks was 10.37%, and for Spanish-surnamed applicants, 11.11%.

To show that the tests were "job related," defendants produced testimony at trial that the tests were widely used and professionally designed; that they were administered by Stevens Institute of Technology, a reputable testing institution; and that they were reasonably related to measuring the aptitudes they were designed to measure in the following four areas: verbal meaning, numerical ability, mechanical reasoning, and spatial relations. This, however, is not sufficient to demonstrate the written examinations' validity or "job relatedness."

The Equal Employment Opportunity Commission Guidelines on Employee Selection Procedures ("EEOC Guidelines"), 29 C.F.R. § 1607, et seq., recognize three methods of validating the job relatedness of a given test: criterion-related validity, content validity, and construct validity. 15 With respect to the tests given by Stevens

¹⁵ These terms are defined in American Psychological Association, Standard for Education and Psychological tests and Manuals at 12-15 (1966). Evidence of criterion-related validity is preferred; it is demonstrated by "comparing the test scores with one or more external variables considered to provide a direct measure of the characteristic or behavior in question." In employment testing, the comparison is made between test scores and measures of job performance; if there is a sufficient correlation, then the test is considered to have validity in predicting job performance and thus to be "job related." Content validity is demonstrated by "showing how well the content of the test samples the class situations or subject matter about which conclusions are to be drawn. A test has content validity when the context of the test matches the content of the job to be performed. Construct validity is evaluated by "investigating what qualifies a test measure, that is, by determining the degree to which certain explanatory concepts or constructs account for performance on the test."

Institute, while there was some evidence of construct validity, there was no evidence of their criterion-related validity nor that a criterion-related study had been completed or planned. Without such evidence, the tests used by JAC from 1964 to 1971 cannot be considered job related, notwithstanding the difficulty of devising a fair test or of testing it for validity. Cf. The Vulcan Society of the New York City Fire Department, Inc., et al. v. Civil Service Commission, et al., 5 FEP Cases 1229, 73 Civ. 201 (S.D.N.Y., filed June 12, 1973) (Weinfeld, J.).

(FUTURE TEST)

JAC indicated at trial that in the future it intended to employ a different test to select apprentices. This test is part of the General Aptitude Test Battery ("GATB") of the United States Trainine and Employment Service and has been denominated "S-61R". A validation study was done on this test in Texas in 1954, though the study did not separately determine the effect of the test on minorities. Cf. EFOC Guidelines, 29 CFR \$ 1607.5(b) (5). While at the present time there is no evidence that S-61R may not discriminate against non-whites, there is equally no evidence that it does. It appears that in other contexts courts have approved use of the GATB. See, e.g., United States v. Local 86, Ironworkers, 315 F Supp. 1202, 1246, 2 FEP Cases 741 (1970), aff'd, 443 F.2d 544, 3 FEP Cases 496 (9th Cir.), cert. denied, 404 U.S. 984, 4 FEP Cases 37 (1971). In view of the lack of evidence that S-61R has a differential impact on nonwhites and since JAC does not intend to disqualify apprenticeship applicants solely on the basis of their test results, the Court will permit the use of S-61R pending a further recommendation from the Administrator to be appointed hereunder.

2. Age Requirements

At present, the apprenticeship program is only open to those applicants who are between the ages of 18 and 24, though credit is given for years spent in military service up to the age of 28. No evidence was presented that this requirement itself had a discriminatory impact on nonwhites; however, in view of the history of past discrimination in the steamfitting industry, this requirement may operate to exclude from the apprenticeship program nonwhites who are now too old to apply. Accordingly, provision will be made so that nonwhites who may have been excluded from the

program in the past but who have nevertheless acquired experience in the trade will have the opportunity during a specified period of time to seek admission to the A Branch by passing a practical examination or by obtaining the certification of an employer who is a party to the collective bargaining agreement. In addition, provision will be made so that applicants between the ages of 18 and 30 may apply to the program. JAC may continue thereafter to use an age requirement for admission to the apprenticeship program, though such requirement will be subject to modification upon the recommendations of the Administrator.

3. Educational Requirements

The present requirements are that applicants have a high school or equivalency diploma. According to 1970 census statistics, 45.3% of nonwhite males between the ages of 18 and 24 and 76.1% of white males between the ages of 18 and 24 in the New York Standard Metropolitan Statistical Area had completed high school. This disparity indicates that such a requirement has a differential impact on nonwhites, operating to exclude a greater number of nonwhites from the apprenticeship program.

In Griggs v. Duke Power Co., supra, the Supreme Court found that the requirement of a high school diploma as a condition of employment in a generating plant did not bear a demonstrable relationship to successful iob performance. 401 U.S. at 431. On the other hand, in United States v. Local No. 86. Ironworkers, supra, the district court approved the use of the high school diploma requirement for applicants to apprentice programs in certain construction trades. 315 F Supp. at 1246.

On the present evidence, a determination cannot be made as to whether a high school or equivalency diploma is a job related requirement for admission to the apprenticeship program. It cannot be said, however, that there should be no educational requirement. Certainly, to understand the classroom instruction offered during the apprenticeship program, apprentices must have some schooling. Accordingly, pending a recommendation by the Administrator and the adoption of an affirmative action program, the present educational requirement will be continued.

4. Physical Ability

The present requirement is that ap-

plicants demonstrate the physical capacity to do the work required of a steamfitter. Since no evidence was introduced that this requirement had a differential impact on nonwhites and since physical ability to perform the work is obviously job-related, this requirement needs no further justification.

5 The Interview

As with the apprenticeship class of 1973, JAC proposes to have applicants interviewed orally by 2-man teams of JAC members (one to represent Local 638 and one to represent steamfitting contractors). In the interview, the teams will inquire into each applicant's motivation, education, work history, health, and family background. In addition, the interviewers propose to ask each applicant whether he has been convicted of a job-related crime within the past 5 years

Since the present format of the interview is a new feature of the selection process, there is no evidence as to whether it has a differential impact on nonwhites. Unless such a showing is made, the Court will permit the use of the interview in the selection of apprentices, pending a recommendation from the Administrator.

B. I ength and Content of the Appropriation of the Ap-

The present program is 5 years long and includes both classroom instruction for one day every two weeks and also on-the-job experience. The classroom instruction is comprehensive, including both theoretical as well as practical subjects relating to the steamfitting field. The program was developed with the consultation and approval of Local 638 and MCA.

While there is some evidence that nonwhites drop out of the program with greater frequency than whites. 16 the evidence introduced at trial does not disclose with specificity what the underlying reasons were In any event, JAC plans in the future to decrease to 4 years the length of the program.

On the present record, a determination of whether the length and content of the apprenticeship program conforms to the requirements of Title VII cannot be made. Moreover, this is a determination better left to the affirmative action program, which will be adopted after considering the rec-

ommendations of the Administrator to be appointed hereunder. Accordingly, pending the adoption of the affirmative action program, the present apprenticeship program will be continued in its present form but will be shortened to 4 years.

MCA's Motion to Dismiss

MCA was named in the government action as a defendant for purposes of relief only. In the Rios action, however, MCA was named as a defendant on the merits on the grounds that it is an "employer" within the meaning of 42 U.S.C. \$ 2000e(b) or an "employment agency" within the meaning of 42 U.S.C. \$ 2000e(c). In addition, the Rios plaintiffs contend that MCA is properly named as a defendant under 42 U.S.C. \$ 1981 and \$ 1983. Section 2000e(b) provides:

"The term 'employer' means a person engaged in an industry affecting commerce who has twenty-five or more employees . . and any agent of such a person."

Section 2000e(c) provides:

"The term 'employment agency' means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person."

Section 2000e(a) provides:

"The term 'person' includes one or more individuals, labor unions, partner-ships, associations,"

In Williams v. New Orleans Steamship Association, 341 F.Supp. 613, 4 FEP Cases 666 (E.D. La. 1972), the Court held that an association of employers would be treated as a single employer for purposes of Title VII. There, the complaint named as defendants the New Orleans Steamship Association, its 28 member companies, and 4 local unions, together with the International Longshoremen's Association. Twelve of the member companies moved to dismiss the complaint against them for lack of jurisdiction inasmuch as they had fewer than the required number of employees to subject them to Title VII's coverage. The Court denied the motion, relying on EEOC policy that "if establishments are part of an integrated enterprise. they may be treated as a single em-ployer for Title VII coverage." 341 F.Supp. at 615, 4 FEP Cases at 668. Plaintiffs there had shown that the association controlled employment on the waterfront and established uniform employment policies and prac-

¹⁶ The dropout figures indicate that 31 whites (6.7%) have left the program as compared with 7 nonwhites (25.0%).

tices applicable to all member companies. In addition, the association owned and operated a central hiring hall at which all longshoremen were hired, and derived its broad authority by delegation from its member companies. In determining whether the 28 companies should be treated as a single employer through the entity of the association, the Court followed the practice of the EEOC in focusing on whether there was an interchange of employees and centralized control of labor relations.

[PUBLIC POLICY]

In view of the national public policy reflected in Title VII to end employ-ment discrimination based on race. color, or national origin, see Hackett v. McGuire Brothers, Inc., 445 F.2d 442, 446-47, 3 FEP Cases 643 3d Cir. 1971), this Court finds the factors summarized in Williams to be per-suasive here. Section 2000e(b) includes within the definition of "employer" both a person "who has twenty-five or more employees" and "any agent of such a person." MCA, as a trade association for purposes of unified collective bargaining, performs the functions of an agent for its member contractors. In addition. equally represented with Local 638 on JAC, which administers the industry's apprenticeship program MCA members employ the major share of the steamfitter work force in New York City and Nassau and Suffolk Counties, and the terms of the collecbetween MCA and Local 638 prevail throughout the industry. Though there is no hiring hall for steamfitters in the New York area, there is sufficient uniformity of employment conditions, at least with respect to the employment of nonwhites, to support the conclusion that MCA is a proper party defendant in the Bios. proper party defendant in the Rios action.

The district court's decision in Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 311 F.Supp. 1002, 2 FEP Cases 472 (E.D. Pa. 1970), aff'd, 442 F.2d 159. 3 FEP Cases 395 (3d Cir. 1971), cited by MCA, held that an association of employers, as apart from its members, did not have standing to challenge a regulation issued by the Department of Labor known as the Revised Philadelphia Plan. MCA argues the same reasoning should apply here. The Court of Appeals, however, termed this holding "at least doubtful." Since the

affected contractors were already before the court and since they had all been represented by the same attorney, the Court of Appeals found that "the presence or absence of the Association as a plaintiff (had) no practical significance." 442 F.2d at 166, 3 FEP Cases at 399.

Similarly, in United States v. Brick-layers Local No. 1, et al., — F.Supp. 5 FEP Cases 863, No. C-71-65, (W.D. Tenn, filed November 29, 1972), the Court found that the Mason Contractors Association of Memphis, Inc. ("MCAM") was not a proper entity against which relief could be obtained because each of the twelve members of MCAM were also named individually as defendants.

In the present case, MCA has greater influence over and responsibility for employment practices applying to the industry as a whote than any single employer. Moreover, the participation of MCA in an affirmative action program is a necessity if the steamfitting industry is to correct the discriminatory effects of past employment practices.

Having found that MCA was properly made a party defendant in the Rios action, this Court, however, does not of course imply that MCA has been responsible ipso facto for all the employment practices here found unlawfully discriminatory or that it is liable in damages to the plaintiffs in Rios. Plaintiffs have shown no specific instances of MCA discrimination. Rather, plaintiffs have demonstrated only that there has been a lack of nonwhite employment in the industry generally and that, in consequence, the industry's referral practices must be changed. For the future, MCA will bear responsibility with Local 633 and JAC to take appropriate affirmative action to correct this situation.

Accordingly, MCA's motion to dis-

Accordingly, MCA's motion to dismiss the Rios action as to it is denied. This disposition makes it unnecessary to consider the other grounds for relief urged by the Rios plaintiffs, particularly since little evidence was brought out at trial bearing on issues other than those presented by the Title VII claims.

Plaintiffs in Rios seek back pay on

Plaintiffs in Rios seek back pay on behalf of members of the class who can show they have been victims of past discriminatory practices (42 U.S.C. § 2000e-5(g)), and for costs and attorneys' fees (42 U.S.C. § 2000e-

¹⁷ In view of the foregoing, it is unnecessary to decide if MCA was properly named as a defendant under 42 U.S.C. § 1981 or

5(k)). These issues are reserved for later determination.

The foregoing constitutes the Court's findings of fact and conclusions of law. F.R.Civ.P. 52(a).

The Order and Judgment, in the form reviewed with the attorneys for all parties, is being filed herewith.

It is So Ordered.

Order and Judgment

IT IS HEREBY ORDERED, AD-JUDGED AND DECREED that plaintiffs shall have judgment against defendants as follows:

A. Equitable Relief

- 1. Defendant, Enterprise Association Steamfitters Local 638 of United Association of the Plumbing and Pipefitting Industry ("Local 638"), its officers, agents, employees, and successors, are permanently enjoined from engaging in any act or practice which has the purpose or the effect of discriminating against any individual or class of individuals on the basis of race, color or national origin. They shall not exclude or expel from union membership, or limit, segregate or classify union membership, or fail or refuse to refer any individual for em-ployment, on the basis of race, color or national origin, nor shall they take any other action which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment because of such individual's race, color or national origin. shall receive and process applications for membership, admit members, train, test, refer for employment, handle grievances, and otherwise administer all of the affairs of Local 638 so as to ensure that no individual is excluded from equal work opportunities, including overtime and advancement, on the basis of race, color or nationa' origin.
- 2. Defendant, Mechanical Contractors Association of New York ("MCA"), its officers, agents, employees, and successors, are permanently enjoined from engaging in any act or practice in the initial individual or class of individuals on the basis of race, color or national origin. They shall not fail or refuse to hire for employment any individual on the basis of race, color or national origin, nor shall they take any other action which would deprive or tend to deprive any individual of equal employment opportunities or otherwise

adversely affect his status as an employee or as an applicant for employment because of such individual's race, color or national origin.

3. Defendant, Joint Steamfitters Apprenticeship Committee of the Steamfitters Industry ("JAC"), its officers, agents, employees, and successors, are permanently enjoined from engaging in any act or practice which has the purpose or the effect of discriminating against any individual or class of individuals on the basis of race, color or national origin. They shall receive and process applications for the apprenticeship program, admit apprentices, train, test, refer for employment, graduate and otherwise administer the apprenticeship program so as to ensure that no individual or class of individuals is excluded from equal work opportunities on the basis of race, color or national origin.

B. The Administrator

- 4. Vincent McDonnell, Esq. is hereby appointed Administrator to implement the provisions of this decree and to supervise its performance. He shall immediately commence his duties.
- 5. In addition to the powers specified in this decree, the Administrator shall be empowered to take all actions, including the establishment of such additional record-keeping requirements as he deems necessary to implement the provisions and ensure the performance of this decree. The Administrator shall hear and determine all complaints concerning the operation of this decree and shall decide any questions of interpretation and claims of violations of this decree, acting either on his own initiative or at the request of any interested person or party. All decisions of the Administrator shall be in writing, and shall be appealable to the Court.

Nothing contained herein shall give the Administrator the right to amend, modify or change the substantive terms of this decree, nor shall he have any power or authority other than that granted to him in this decree.

- 6. The compensation at a rate not to exceed \$60 an hour and expenses of the Administrator shall be fixed by the Court, and shall be charged upon such of the defendants as the Court may direct.
- 7. The Administrator shall remain in office for an initial period of three years and thereafter shall remain in office for such time as the Court shall determine.

C. Affirmative Action Program

8. Within three months of the date of this decree, defendants Local 638, MCA and JAC shall jointly or separately if they are unable to agree, submit to the Administrator and the plaintiffs an affirmative action program. Said program shall be designed so that a sufficient number of black and Spanish-surnamed individuals (hereinafter referred to as "non-whites") will be admitted to full journeyman membership in Local 638's Construction Branch ("A branch") in order to achieve a minimum goal of 30% non-white membership by July 1, 1977. The Administrator shall set such minimum annual goals as he deems necessary in order to achieve the minimum goal of 30%. The affirmative action program shall provide for periodic reports to the Administrator indicating progress towards compliance with the above minimum goal.

9. To achieve the goal set out in paragraph 8, the affirmative action program shall be guided by the following provisions, except as modified by the Administrator with the approval of the Court, and shall include a direct A branch admission program, an apprenticeship training program, and other training as follows:

(a) Direct Admission to the A Branch

Individuals meeting the requirements of paragraph 11(a) and (b), infra, shall be admitted directly to A Branch membership and the defendants shall develop and implement, with the approval of the Administrator, an affirmative program of recruiting non-white journeymen. Any proposed changes in the procedures for admission shall be considered by the Administrator, who shall take all steps necessary to ensure equal employment opportunities for non-whites and any objection thereto shall be resolved by the Court.

(b) Apprenticeship Training Program

Pending achievement of the goals set out in paragraph 8, the apprenticeship program shall meet the following requirements:

(i) the program shall be four years in duration, subject to a recommendation by the Administrator for approval by the Court that a shorter period would be appropriate and aid in achieving the goals set forth in paragraph 8;

(ii) the Administrator shall determine the appropriate size and fre-

quency of the apprenticeship classes each year. At least 30% of those indentured in each year for the years 1974 through 1977 shall be non-white subject to a determination by the Administrator that a greater percentage of non-white apprentices is necessary to achieve the goals set out in paragraph 8. Such individuals shall be selected pursuant to the following standards:

- a. Age: between 18 and 30 inclusive at the time of application.
- b. Criminal Records: applicants' criminal records, if any, may not be considered unless an applicant has been convicted of job-related crimes, within five years prior to the date of application.
- c. Education: High School diploma or its equivalent subject to revision in the affirmative action program.
- d. Test: Tests validated in accordance with 29 C.F.R. \$\$1607 et. seq., or as may be specified in the affirmative action program may be used to select apprentices.
- (iii) The Administrator shall require appropriate publicity prior to the formation of each class, to inform non-whites of training, employment and union membership opportunities. To publicize the program, defendants shall also participate in career programs at local high schools in non-white areas.

(c) Other Training

- (i) In the recruitment and training of non-whites, the defendants shall cooperate with the Department of Defense and any other appropriate governmental agency.
- (ii) Defendants may propose but the Administrator may require a continuing training program for journeyman steamfitters who wish to develop their skills or specialties in the trade, available equally to white and nonwhite steamfitters.
- 10. Within 30 days after receipt of defendants proposed affirmative action program, plaintiffs shall submit their comments, if any, to the Administrator, who shall review all of the materials submitted to him and, within 30 days after receiving plaintiffs comments, shall submit to the Court an affirmative action program designed to achieve the purposes of this decree. Any objections to this program shall be resolved by the Court.

D. Transitory Provisions

Temporary Procedures for Direct Admission to the A Branch

11. Following the issuance of this decree, and for the first 3 months following the adoption by the Court of the practical examination referred to in paragraph 13, infra.—unless extended by the Court upon application of any of the parties—Local 638 shall admit as full journeyman members of its A branch only graduates of the apprentice program and non-whites who apply in writing and who meet the following conditions:

(a) 4 years' experience which shall include experience obtained in the United States or elsewhere, in Local 638's B branch, or in construction or maintenance plumbing, pipefitting or welding as an employee of a union or non-union contractor, or other employment reasonably related or similar to steamfitting work, including experience in the Armed Forces and vocational training related to the skills of a journeyman steamfitter; and either

(b) successful completion of a practical examination administered by a board of three examiners who shall act by majority vote, consisting of the Administrator or his representative, a representative from the union and one chosen by the Administrator from either the Recruitment and Training Program. Inc., or Fight Back (hereinafter "minority referral sources") or

(c) certification by an employer who is a party to the present collective bargaining agreement with Local 638 that such non-white has been performing construction steamfitting work for at least six weeks within the territorial jurisdiction of Local 638 and is a competent steamfitter.

Applicant's criminal record, if any, may not be considered unless an applicant has been convicted of jobrelated crimes, within five years prior to the date of application.

There shall be no qualifications for membership in the A branch other than those set forth above, and the payment of an initiation fee as described in paragraph 15.

All disputes with respect to almission of members shall be heard and determined by the Administrator. Any proposed changes in the procedures for admission to the Abranch shall be considered by the Administrator, who shall take all steps necessary to ensure equal employment opportunities for non-whites. Any objections to changes in the admissions

procedures, if any, instituted by the Administrator shall be resolved by the Court.

12. Following the expiration of the period in paragraph 11 above, until the effective date of the affirmative action program, Local 638 shall admit as full journeymen members of its A branch whites and non-whites, on a one-for-one basis who meet the conditions set forth in paragraph 11(a) and (b). The number of non-whites admitted under paragraph 11—up to 250—shall be includable in this figure. Any proposed changes in these interim procedures shall be considered by the Administrator and approved by the Court.

13. Within 5 days of the date of this decree, defendants MCA and Local 633 shall submit to the Court, with copies to the parties, a practical examination for admission of journeyman steamfitters to the A branch. Within 5 days thereafter, plaintiffs shall submit comments and/or a separate proposed practical examination. The Court shall adopt a practical examination and shall inform the parties of the contents thereof. Said practical examination shall be job-related. It shall be administered within 45 days of the date of this decree, and at least once every month thereafter. At least three weeks prior to administering each examination, Local 638 shall give to the Administrator, to each applicant, to the minority referral sources and to the New York City Manpower and Career Development Agency written notice by first class mail of the time and place of the examination, as well as a description of the nature of the examination and of the kinds of tasks to be performed.

14. Examinations shall be graded by the board of examiners, acting by majority rule, and the applicants shall be advised of the results by first class mail within 20 days from the date of the examination. A report containing the name, address, and race, color or national origin of the individual taking the examination. and whether he passed or failed, shall be served on the plaintiffs within 20 days after each examination is given. Failure on an examination shall not prejudice an applicant's right to retake it at six months intervals, nor shall such individual suffer any change in his employment status or work referrals because of his failure to pass the membership examination. and such applicants shall be so no-

15. Within thirty days of the date when the applicants are advised of the results of the examination, all qualified applicants who passed shall be accorded full journeyman status and issued temporary membership cards in the A branch. Upon receipt of such cards, such persons shall commence payment to Local 638 of an initiation fee in the amount of \$200, payment to be made over a period of eight months, following which permanent membership books will be promptly issued.

Temporary Procedures for the Apprenticeship Training Program

16. During 1973 there shall be a minimum of 400 apprentices, of whom 175 shall be non-white, indentured into a program of no more than 4 years, chosen in an impartial manner from the list of qualified apprenticeship applicants selected as of the date of the decree. If the JAC wishes to indenture a larger number of applicants into the program it shall do so on the basis of one non-white for every white so indentured. Applicants' criminal records, if any, may not be considered unless an applicant has been convicted of job-related crimes within five years prior to the date of the application.

Defendants shall use their best efforts to provide apprentices with not less than 1,750 hours per year of reasonably continuous employment.

The Administrator shall hear and determine all disputes relating to an applicant's qualifications and whether or not apprentices have successfully completed the apprenticeship program.

Publicity

17. Until the affirmative action program is adopted by the Court. defendants shall regularly publicize in the minority media, and in such other media as the Administrator shall require, the employment and membership opportunities available under this decree, and the procedures for taking advantage of such opportunities. The text of the materials used for this publicity shall be furnished to the plaintiffs and the Administrator.

E. General Provisions

Work Referral

18. Defendants shall provide qualified non-white steamfitters with assistance in obtaining and retaining employment.

19. Local 638 and MCA shall use their best efforts to maintain at their

respective offices during normal business hours a register setting forth (a) all current construction jobs and (b) all prospective jobs which are expected to begin during the ensuing six months in Local 638's territorial jurisdiction. These registers, which shall be updated at least once a week, shall contain available information as to contractor's same and address, address of job site, name of tob superintendent and steamfitter foreman, expected duration of job and number of steamfitters employed and estimated number to be employed on the job. These registers shall be known to all persons seeking jurisdiction of Local 638, whether or not they are union members.

they are union members.

20. Local 638 shall maintain at its offices a list of all qualified non-whites who contact the union seeking construction steamfitting work in its territorial jurisdiction, whether or not they are union members. This list, which shall be updated at least once a week shall contain the name, address, telephone number and union affiliation, if any, of each such person, and will indicate whether each person specializes in any aspect of the trade, e.g., welding Local 633 shall furnish a copy of this list each week to MCA and to the Administrator.

21. In the event that MCA, or any individual employer (whether or nor a member of MCA) requests the union to send it construction steamfitters, at least 25% of the persons referred by the union shall be qualified non-whites selected on a firstified non-wnites selected on the come first-served basis from the that the number of persons on the list is inadequate to meet the above requirement, the union shall refer all non-whites on said list and any other available persons. The union shall record each such request for steam-fitters, including the date, name of contractor, job site, number of steamfitters requested and number referred. The union shall also record the names and addresses of the non-whites referred. Copies of said records shall be supplied monthly to the Administrator.

22. The Administrator shall conduct an investigation of the present work referral system, the transfer of their work crews from job site to job site, and its effects upon the employment opportunities of non-whites, and within one year of the date of this decree, he shall submit to the parties and the Court such recommended changes, if any, in the work

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referral system that he feels are necessary to ensure that non-whites receive equal employment opportunities.

In order to accomplish the objectives of this paragraph, the Administrator may require such reports as he deems necessary, including reports indicating the duration of employment, earnings, reasons for layoffs, race and other relevant information.

Defendants shall use best efforts to ensure that records of the Steamfitters Industry Security Benefit Fund. Welfare Fund. Pension Fund. Vacation Plan and Education Fund are available upon request of the Administrator.

23. At any time, any of the parties hereto may apply to the Administrator and then to the Court for the purpose of seeking additional orders to ensure non-discriminatory referrals of construction steamfitters for employment.

Back Pay

24. The issue of back pay will be reserved for subsequent decision by the Court.

Attorney's Fees

25. The issue of attorney's fees will be reserved for subsequent decision by the Court.

Costs

26. The issue of costs will be reserved for subsequent decision by the Court.

Class

27. The two district classes in the Rios case, as determined in the Order of Judge Tenney, dated August 10, 1971, comprise:

(a) All Negro and Spanish Sur-named Americans residing in New York City and the Counties of Nassau and Suffolk in the State of New York who now or at any time in the future have the skills necessary to work as journeymen steamfitters; and

(b) All Negro and Spanish Sur-named Americans residing in New York City and the Counties of Nassau and Suffolk in the State of New York who now or at any time in the future are capable of learning such skills and who wish to obtain access to steamfitting work in New York City and said Counties.

Continuing Jurisdiction

28. This Court shall retain jurisdiction over this action to ensure compliance with the terms of this judgment and to enter such additional orders as may be necessary to effectuate equal employment opportunities. Dated: New York, New York.

Order of March 29, 1974, Adopting Affirmative Action Plan. (Rec. #74)

(Caption Omitted)

Pursuant to section C, paragraph 10 of the Order and Judgment filed June 21, 1973, the Affirmative Action Plan annexed hereto is adopted.

It is so ordered.

Dated: New York, New York
March 29, 1974

(sd) DUDLEY B. BONSAL United States District Judge

Affirmative Action Plan: Remaining Portions

(Rec. #74)

(NOTE: Paragraphs 15 through 26 and 29 of the Plan, designated by Appellants, are reprinted supra, at pages 40a to 45a. The remaining portions of the Plan, designated by Appellees, are reprinted below.)

AFFIRMATIVE ACTION PLAN

for

ASSOCIATION, AND THE JOINT APPRENTICUONIP COMMITTEE

I. THE ADMINISTRATOR

1. Vincent D. McDonnell, Esq., who was appointed

(Affirmative Action Plan: Remaining Portions)

Administrator under the Order and Judgment of June 21, 1973, is continued as Administrator to implement the provisions of this Affirmative Action Plan.

2. The Administrator shall remain in office until July 31, 1977, unless the Court otherwise determines.

II. THE PLAN

3. The goal of this Affirmative Action Plan is to reach a minimum of 30% non-white membership in the A Branch of Local 638 (hereinafter "the Union") by July 1, 1977. The minimum annual goals determined by the Administrator are as follows:

15% by July 15, 1974 20% by July 15, 1975 25% by July 15, 1976 30% by July 1, 1977

4. For the purpose of achieving the minimum annual goals set forth above, the total membership of the A Branch against which the 30% goal is to be measured shall be deemed to be: (1) all journeyman members who have worked one or more hours per year and are available to be considered for work; (2) all journeyman members on disability who may revert to a work status in the future; (3) all in the Apprenticeship Training Program; (4) all trainees in programs of not more

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(Affirmative Action Plan: Remaining Portions)

than four years' duration in which the Union and the employers participate, such as the New York Plan, for the training of non-whites and upon the satisfactory completion of which the trainees are admitted to A Branch membership; and (5) all permit men who worked at least 800 hours during the preceding twelve months.

- 5. On or before June 1 of each year, the Steamfitters Industry Funds Office shall report the totals of each of the above categories to the Administrator. With respect to estegories (1) and (5) above, the total reported shall be for the twelve-month period ending March 31 of the year of the report. On or before June 1 of each year, the Union will use its best efforts, with the cooperation of the parties, to submit to the Administrator a report setting forth the names of all non-whites in each of the categories set forth in paragraph 4. Such reports shall serve as the basis for the Administrator's report to the Court on the status of progress toward the minimum annual goals set forth in paragraph 3 above. The Administrator shall make his report to the Court on or before July 31 of each year. The Union and the Funds Office shall set up a system to assure that this information is available to the Administrator on a continuing basis.
 - 6. The minimum annual goals set forth in paragraph

(Affirmative Action Plan: Remaining Portions)

3 shall be met through the following:

- (a) The Apprenticeship Training Program;
- (b) Direct Admission to the A Branch;
- (c) Programs for Other Trainces.
- 7. The Administrator shall review the entrance into the A Branch of non-whites on a continuing basis to achieve the minimum annual goels.

A. The Apprenticeship Training Program

- 8. The Apprenticeship Training Program shall be four years in duration, and the Joint Apprenticeship Committee (hereinafter "JAC") shall obtain such approval as is necessary from federal and state agencies. Upon completion of the Program, apprentices shall be admitted as journeymon members of the A Branch.
- 9. Applicants to the Program shall be selected pursuant to the following standards:
 - (a) Residence: Applicants must be residents of New York City or Nassau or Suffolk Counties at the time of opplication, or of such adjoining areas as may be approved by the Administrator.
 - (b) Age: Applicants shall be between the ages of 18 and 30, inclusive, at the time of application.

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(Affirmative Action Plan: Remaining Portions)

- (c) Criminal Records: Applicants shall not have been convicted of a job-related crime within the five years preceding their application. If JAC finds that any applicant was convicted of such a job-related crime, it shall submit the application to the Administrator for final decision before excluding the applicant from the Program.
- (d) Education: Applicants shall have a high school diploma or its equivalent, and all notices and advertising shall so state. However, should any recruitment campaign not produce enough high school graduates (or equivalent), the Administrator may reduce this requirement for any subsequent class if in his judgment the minimum annual goals set forth in paragraph 3 cannot be met.
- established by JAC, one list for non-whites and one for all others. Each list shall be based upon the grades achieved through the S-61R written test and upon the results of an oral interview given each applicant by JAC. Applicants selected on the basis of the written test and oral interview shall, upon payment of a \$25 fee to the JAC, undergo a physical examination and, upon being found physically fit, shall be indentured into the Apprentice Program.
 - 11. Validation: Should a properly validated

(Affirmative Action Plan: Remaining Portions)

uritten test be approved by an appropriate governmental agency, such test may be used for admission purposes upon approval by the Court on the recommendation of the Administrator.

- parties, shall use its best efforts to provide apprentices with continuous employment, and to see that each employer who has a contract with the Union employs apprentices in reasonable proportion to the number of journeymen employed by said employer. JAC shall render a periodic report to the Administrator which shall contain the name of each unemployed apprentice who is able to work but unable to find employment and the name of each employer, setting forth the number of its apprentices and journeymen.
- dtermines, there shall be a minimum of 100 non-whites indentured into the Program each year (c.g., 1974, 1975, 1976 or 1977).

 If any non-whites drop out of the Program in any year an equal member of non-whites shall be added in the next year's class.

 If any class exceeds 200 in number, then at least one-third of

the excess number of apprentices shall be non-white.

The Union, JoB and AdA have expeed that the minimum number of apprentices to be indentured into the Program shall be: 1974, 100; 1975, 125; 1976, 125; 1977, 125; that JAC may indenture additional number of apprentices if it determines that employment conditions in the industry warrant such action; and that the racial composition of each class shall be determined by JAC, in consultation with the Administrator, in light of compliance with the minimum annual goals.

(Affirmative Action Plan: Remaining Portions)

14. Advertising: The JAC shall be required to send informational circulars advising of the opportunities in the Program regardless of race, color, or national origin to the Board of Education for transmittal to local high schools and vocational schools in non-white areas, to the New York State Department of Labor, to the United States Department of Labor, to the Assistant Secretary of Defense for Hanpower Affairs, and to minority recruitment sources. The informational circulars shall be sent in April and November of each year. The circulars shall advise that applications can be secured by writing to JAC.

C. Programs for Other Trainees

to develop and participate in programs, such as the New York Plan, designed to train non-whites in steamfitting skills within four years, upon completion of which said non-whites are to become members of the A Branch. The Union and the employers shall notify the Administrator and the other parties whenever they agree to participate in such a trainee program, and shall use their best efforts to ensure that the participants in such programs receive

-71a-(Affirmative Action Plan: Remaining Portions) adequate training and to provide them with continuous employment. 28. The Union and the employers shall use their best efforts to place experienced non-whites who fail the practical exemination in such training programs at a level commonsurate with their experience and ability. 30. The Union and MCA are encouraged to develop an advanced training program to elevate the chills of journeyrun members of the A Branch. Such a program shall be available equally to white and non-white steamfitters. 31. Unless otherwise determined by the Administrator, the Union shall advertise at least once every three months in two minority newspapers of general circulation in the City of New York, setting forth the opportunities provided to non-whites under this Affirmative Action Plan, which advertisements shall be approved in advance by the Administrator. 32. The Administrator, in his discretion, may make further or different provision for reporting and advertising. 33. At any time, any of the parties hereto may apply to the Administrator and then to the Court for the purpose of seeking additional orders to insure equal

(Affirmative Action Plan: Remaining Portions)
employment opportunities for non-whites.

34. This Affirmative Action Plan shall become effective on March 31, 1974.

Plaintiffs' Motion of October 15, 1973 to Extend

Transitory Period of the Order of June 23, 1971,

With Exhibits to Such Motion (Rec. #41)

(Caption Omitted)

Upon the annexed Affidavits and all prior proceedings had herein and pursuant to paragraph D.ll of the Order of this Court dated June 21, 1973, plaintiffs move for an Order extending the time during which the defendant Enterprise Association Steamfitters Local 638 of U.A. must admit as full journeyman members of its A Branch only graduates of the apprenticeship program and non-whites who apply in writing and meet the requirements of paragraph 11 of said Order to and including January 31, 1974.

Respectfully submitted,

PAUL J. CURRAN United States Attorney

Dated: New York, N.Y. October 15, 1973

By: S Doe B. HARRIS

Assistant United States
Attorney

Attorney for Plaintiff in 71 Civ. 2877

DENNIS R. YEAGER

Attorney for Plaintiffs in
71 Civ. 847

(Caption of Supporting Affidavit Omitted)

STATE OF NEW YORK)

COUNTY OF NEW YORK)

PAUL PACKARD, being duly sworn, deposes and says:

- 1. He is employed as a Program Supervisor by R-T-P, Inc., an organization designated as a "minority referral source" in the Order of this Court dated June 21, 1973 (the "Order").
- 2. In his capacity as a Program Supervisor for R-T-P, Inc. he has been assigned the duty of recruiting non-white journeymen to take the journeyman examination established by the Order and assisting them in filing applications and attending scheduled examinations.
- 3. As a result of his work with non-white journeymen he is familiar with the number of individuals referred by R-T-P, Inc. who are at various stages in the process of journeyman selection under the Order and specfically is familiar with the following facts:
 - (a) as the result of the recruitment efforts of R-T-P, Inc. as of October 11, 1973, at least 900 individuals

had submitted letters to the Steamfitters Local 638 of the U.A. (the "Union");

- (b) on the basis of R-T-P, Inc. records on September 28, 1973, two hundred and fifty-six individuals had not received application forms from the Union in response to their letters seeking such applications (a list of one hundred and sixteen of these individuals is attached as Exhibit A; upon information and belief, the Union maintains that applications have been mailed to the remaining one hundred and forty one though R-T-P, Inc. records are to the contrary [a list of these individuals is attached as Exhibit B]);
- (c) as of September 28, 1973, of those individuals who had received applications and who had returned them to the Union, one hundred and seventy-one had yet to be assigned a test date (a list of the names of these individuals is attached as Exhibit C);
- (d) as of October 1, 1973, forty-nine individuals had taken one phase of the journeyman test and were waiting to complete their testing (a list of the names of these individuals is attached as Exhibit D);
- (e) I have been informed and believe that sixtyeight individuals have completed testing and achieved passing scores.
- (f) I have been informed and believe that fortyfour individuals have been admitted to the Union;
 - (g) at least 788 individuals referred by R-T-P,

Inc. are thus awaiting testing either because they have not received applications or because they have not taken both tests.

4. Because of the very large number of individuals whose names are on file with R-T-P, Inc. and who have indicated their interest and experience in steamfitting, R-T-P, Inc. has been unable to contact all of the individuals who may be appropriate for testing and I would estimate that a large number of such individuals is available; for example R-T-P, Inc. has not been able to contact the seventy-seven individuals in training under the New York Plan, many of whom would have the requisite experience and ability for full journeyman status.

WHEREFORE, deponent respectfully requests that this Court grant plaintiffs' Motion.

Respectfully submitted,

Sworn to before me this 12th day of October, 1973

BRUNHILDA S. BAYO Notary Public, State of New York No. 24-0199040 Qualified in New York County Commission Expires March 30, 197,5

STEAMFITTER APPLICANTS WHO HAVE APPLIED TO LCCAL #638 BUT, AS OF THIS DATE, HAVE NOT RECEIVED AN APPLICATION

- Tuan Antonio Aguilar
 37-78 101 Carona Pl
 Queens, New York 11368
 335-9211
 Date Requested: 8/8/73
- 3. Pablo M. Alverio 1455 Harrod Ave., #4H Bronx, New York 328-0484 Date Requested: 9/11/73
- 5. Pierre L. Accius 56 E. 32nd St Brooklyn, New York
- 7. Ivanhoe Anderson 608 Maple Street #4 Brooklyn, New York 11203
- 9. Reinaldo Bermudez
 1060 Sherman Avenue, #5L
 Bronx, New York 10456
 538-7174
 Date Requested: 8/17/73
- 11. Patrick Baboolal
 175 E. 52nd St
 Brooklyn, New York 11203
- 13. Clyde C. Baptiste
 1410 New York Avenue
 Brooklyn, New York 11238
- 15. Paul E. Binimelis
 425 Wythe Ave., #3
 Brooklyn, New York 11211
- 17. Earl D. Bonadie 175 E. 52nd St., #Dl Brooklyn, New York
- 19. Christopher Bowen
 1383 Nostrand Ave.,
 Brooklyn, New York 11226
- 21. Winford R. Brereton 6925 Thusby Ave., #1 Arverne, New York 11692

- 2. Genaro Alicea
 348 E. 134th St., #1B
 New York, New York 10454
 Date Requested 8/14/73
- 4. Octavio Alvarado
 788 Fox Street
 Bronx, New York
 Date Requested: 9/14/73
- 6. Thomas C. Alexander 940 E. 180th Street #2E Bronx, New York 10460
- 8. Clive Anderson 101 Lafayette Ave., #10H Brooklyn, New York 11217
- 10. Fernando Escalante Bonilla 880 Southern Blvd., #3 Bronx, New York 10459 Date Requested: 9/14/73
- 12. Joseph I. Baptiste 1315 St. Johns Pl., #7 Brooklyn, New York 11213
 - 14. Philbert A. Benjamin
 594 Park Pl., #3C
 Brooklyn, New York 11238
 - 16. Hollis G. Boatswain 1087 Carroll St Brooklyn, New York 11225
 - 18. George Bonds
 266 E. 32nd St
 B. Joklyn, New York 11226
- 20. Ira H. Boyce 322 Throop Avenue Brooklyn, New York 11206
- 22. Stanton M. Brooks
 768 Jefferson Ave., #14A
 Brooklyn, New York 11212

LIST OF APPLICANTS WHO STATE THAT THEY HAVE NOT RECEIVED AN APPLICATION FROM THE STEAMFITTERS, LOCAL #638; HOWEVER, LOCAL #638 STATES THEY HAVE MAILED OUT APPLICATIONS AND ASSIGNED THEM APPLICATION NUMBERS.

- 1. Placido Jeres Alonso 173 Congress St Brooklyn, New York 11201 Date Requested: 8/13/73
- 3. Everald Anderson
 93 Featherbed Lane #2G
 Bronx, New York 10452
 364-2779
- 5. Hawthorne C. Amiel 22 St. Marks Ave. Brooklyn, New York 11217
- 7. James Archer 1490 Bedford Ave Brooklyn, New York 11216
- 9. Luis R. Baez
 480 Central Park West #1N
 New York, New York 10025
 666-8785
 Date Requested: 7/8/73
- 11. Edwardo Batallas 203 W. 94th St., #1C New York, New York 10025 866-9457 Date Requested: 8/22/73
- 13. Rawle Brazzier
 2176 Grand Ave., #5G
 Bronx, New York 10453
 365-3008
 Date Requested: 8/13/73
- 15. Theodore Barrios 2250 W. 11th St Brooklyn, New York
- 17. Rogelio Benitez
 230 W. 82nd St. #2C
 New York, New York 10024

- 2. Ramon Elias Arrendel
 575 W. 172nd St., #6G
 New York, New York 10032
 781-4573
 Date Requested: 8/9/73
- 4. Jefferson Allen
 711 Ralph Ave., #G1
 Brooklyn, New York 11207
- 6. Samuel S. Andrews
 760 Saratoga Avenue
 Brooklyn, New York 11212
- 8. David Bacon
 629 Casanova St., #DD
 Bronx, New York
 991-2517
 Date Requested: 8/8/73
- 10. Charles Barnes
 2155 Grand Ave., B4
 Bronx, New York 10453
 733-5005
 Date Requested: 8/8/73
- 12. Alfredo Bayona
 532 W. 163rd St., #44
 New York, New York 10032
 Date Requested: 8/14/73
- 14. Emanuel J. Baptiste 1075 Bushwick Ave., 2nd Fl Brooklyn, New York 11221
- 16. Leroy J. Belcher
 22-17 8th Ave., #4C
 New York, New York
- 18. Carl H. Bennett
 985 Anderson Ave., #4G
 Bronx, New York 10452
 992-7522

19. Ross Buford
 40 W. 115Th St., #2J
 New York, New York 10026

20. Raymond Bailey 691 Nostrand Ave Brooklyn, New York 11216

Exhibit B

141 Name.

STEAMFITTER APPLICATION WHO HAVE RETURNED APPLICATIONS
TO LOCAL # 638 BUT, AS OF THIS DATE, HAVE NOT RECEIVED A
TEST DATE

Favezune Almontazeu 16 Houston St. New York, New York 10002

Carlos Arroyo 1354 Hancock St. Brooklyn, New York

Philip Arthur 770 St. Marks Ave. Brooklyn, New York

Carlyle Andall 228 Moffat St. Brooklyn, New York 11207

Danilo Primo Assandri 8S# 122-52-2292 Application #582

Rodolfo Blacio 68 Bleecker St. Brooklyn, New York

George Bramwell 30 New York Ave. Brooklyn, New York

Norman Badb 1511 Bushwick Ave. Brooklyn, New York

Kenneth Beach 253 Park Side Ave Brooklyn, New York 11226 Carlos Arturo Borrero SS# 080-48-7012 Application #978

John Chevalier 179-19 142nd Ave. Springfield Gardens, New York 11434 Tel: 978-4369

Miguel Cordero 2264 Pacific St. #2 Brooklyn, New York

Clinton E. Coston 160 Navy Walk Brooklyn, New York 11201 Tel: 855-0514

Peter K. Clarke 1426 Brooklyn Ave. Brooklyn, New York

Jorge Cordova 101-34 133rd St. Richmond Hill, New York 11419

Vernon Carode 694 Ralph Ave. Brooklyn, New York 11212

Mervyn Charles 1048 Union St. Brooklyn, New York

Yves Beauzile 240 W. 104th St. New York, New York 10025

James Beazer 2075 First Ave. New York, New York 10029

Sylvio W. Bermo SS# 073-50-8748 Application #756

Hilton Boatswain SS# 11-46-8928 Application #757 Raymond D. Coteau 606 E. 52nd St. Brooklyn, New York 11203

Jean M. Clement 316 E. 31st St. Brooklyn, New York

Garrad Carrie 205 Clinton Ave. Brooklyn, New York

Joseph Collins 168-24 127th Ave. Jamaica, New York

Carmello Collazo
16 Morningstar Rd.
Staten Island, New York 10303

171 Name

Exhibit C

Individuals Tested in Pipefitting Only

- 1. Edward Abrahams 777 Pine Street Brooklyn, New York 11208
- 2. George Abraham 189 Sterling Place Brooklyn, New York 11238
- 3. Gene Ashby
 59 Decatur Street
 Brooklyn, New York 11216
- 4. George Assing
 540 Pacific Street
 Brooklyn, New York 11217
- 5. John Bermudez 19 W. Masholu Parkway N Bronx, New York 10467
- 6. Calvin Bennett 749 Cleveland Street Brooklyn, New York 11208

- 13. Stephen Charles
 124 W. 134th Street
 New York, New York 10030
- 14. Trevor Cheeseman 133 Newport Street Brooklyn, New York 11212
- 15. Fitzroy Daniel 977 48th Street Brooklyn, New York 11219
- 16. Kelvin DeBourgh 538 E. 28th Street Brooklyn, New York 11210
- 17. Jorge Diaz 627 Wales Avenue Bronx, New York 10455
 - 18. Patrick Elva
 73 St. Marks Avenue
 Brooklyn, New York 11217

- 7. Winston Blair 117 E. 51st Street Brooklyn, New York 11203
- 8. Calwyn Brathwaite 1402 Dean Street Brooklyn, New York 11216
- Kenneth Bryon
 9. 624 President Street
 Brooklyn, New York 11215
- Fitzroy Callendar

 10. 185 E. 92nd Street

 Brooklyn, New York 11212
- 11. Lloyd Caloudon 117 McDonough Street Brooklyn, New York 11216
- 12. Dennis Chancellor 1237 Stanley Avenue Brooklyn, New York 11208

19. Victor Francis
266 Cozine Avenue
Brooklyn, New York 11207

- 20. Sylvester Graig 184 Hull Street Brooklyn, New York 11233
- 21. Anthony Grumps
 239 Schaeffer Street
 Brooklyn, New York 11207
- 22. Henry Hazzard 1063 Hancock Street Brooklyn, New YOrk 11221
- 23. Osbourne Hemans 838 Hopkinson Avenue Brooklyn, New York 11212
- 24. Ramon Heyliger 661 Lefferts Avenue Brooklyn, New York 11203

Exhibit D 49 Names

(Caption of Supporting Affidavit Omitted)

DENNIS R. YEAGER, being duly sworn, deposes and says:

- 1. He is an attorney duly admitted to practice before this Court and is the attorney for plaintiffs in this matter.
- 2. He received by mail a copy of the attached Exhibit
 A, which is a letter from Mr. John J. Sheeran, Secretary-Treasurer
 of the defendant Enterprise Association Steamfitters Local 638
 of U.A. (the "Union") indicating the number of individuals who
 are at various stages in the journeyman examination program

established by paragraph D.11 of the Order of this Court of June 21, 1973.

- 3. The attached Exhibit A indicates that, as of September 17, 1973, some 1204 applications have been mailed to applicants for Union membership but that only 164 had taken the necessary examination.
- 4. Upon information and belief, six individuals are being examined per day presently and no examinations are conducted on the weekends or holidays. Plaintiffs in 71 Civ. 847 have repeatedly recommended that arrangements should be made to increase the number of individuals examined (see letters attached as Exhibit B).
- 5. Upon information and belief, the journeyman examination program began very slowly with three examinations being conducted during the first week and twelve being conducted during the second week; as the letters attached as Exhibit B indicate, plaintiffs repeatedly requested that the examinations be conducted more rapidly during this period.
- 6. Assuming that the Union statistics set out in Exhibit A are taken at their best and that the projection that 505 individuals will be examined through October 31, 1973, as recited in Exhibit A, is accurate, assuming that no more than 1,000 individuals return applications to the Union and assuming that the present rate of testing continues, at least 80 examination days would be necessary to complete testing of all applicants.

7. Consequently, the period during which only non-whites are to be admitted must be extended until at least January 31, 1973 in order to accommodate the large numbers of non-white applicants.

DENNIS R. YEAGER

Sworn to before me this (512) day of October, 1973.

NOTARY PUBLIC Bago

RETURNING S. EAYO

Notary France, State of May York

115, 24-617-610

Qualified in the world County

Commission Expires March 30, 1975.

ENTERPRISE ASSOCIATION

STEAM, HOT WATER, HYDRAULIC, CHRINCLES, PNEUMATIC TUBE, COMPRESSED AIR, LES MACHINE, AIR CONDITIONING AND GENERAL PIPE FITTES

YTHIDIY OHA XECY WEN TO

A.F. L.C. 1. O.

STEAMHTTERS LOCAL UNION 603 OF THE UNITED ASSOCIATION

SECRETARY'S OFFICE 841 BROADWAY NEW YORK, N.Y. 10003 Phone Gargon 44997



MEETS AT
ROOSEVELT AUDITORIUA
100 East 17th Street
New York City, N.Y.

EXHIBIT E

September 17, 1973

Vincent D. Mc Donnell, Esq. 127 East 35th Street New York, N.Y. 10016

Dear Sir:

Please be advised of the following figures in relationship to your request of August 2, 1973:

1 -	Number of Metal Trades members transferred to the Building Trades branch	20
2 -	Number of others admitted directly into the Building Trades branch	24
3 -	Number who have taken the practical test	164
	(a) 68 passed (b) 47 failed (c) 49 passed the fitting part and are rescheduled for the welding or brazing part on October 9, 10, 11, 12.	
4 -	Number who are scheduled to take the practical examination through October 31	505
. 5 -	Total applications mailed	1204
	Total applications mailed Total completed applications returned	613
6 -		- 1
6 -	Total completed applications returned Number of applications returned with	613
6 - 7 - 8 -	Total completed applications returned Number of applications returned with questionable experience Number of employees certified by contractors but not verified by the Steamfitting Industry	613

Exhibit P

Vincent D. Mc Donnell, Esq.

September 17, 1973

Complete list of numbered applications and date forwarded.

Complete list of persons notified to appear for practical test

Copies of advertising tear sheets.

Sincerely yours,

JOHN J. SHEERAN

Secretary Treasurer

jjs/cd encls.

P.S. Also enclosed are the following:

a - Job Location Register

b - Employment Lists

c- Contractors requests for steamfitters.

J.J.S.

cc - Marris Yoager

National Employment Law Project

423 West 118th Street New York, N. Y. 10027 (212) 866-8591

August 7, 1973

Vincent McDonnell, Esq. Manpower Education Institute 127 East 35th Street New York, N. Y. 10016

Rios, et al. v. Enterprise
Association Steamfitters
Local 638 of U.A., et al.,
71 Civ. 847; United States
of America v. Enterprise
Association Steamfitters
Local 638 of U.A., et al.,
71 Civ. 2877

Dear Mr. McDonnell:

A number of difficulties with the implementation of the court's order have been drawn to my attention:

- (1) At least one individual with many years of experience in the "B" branch and the required certificate from his employer, Irwin Leito, has been denied membership and told that he will be required to have a decision from you before he can be admitted. Obviously the entire decree will break down if we are required to have a hearing before you on individuals who are so clearly entitled to union membership. I would like to request that you order Mr. Leito admitted immediately and order the Union to accept similarly situated workers without the necessity of an appeal to you.
- (2) The application procedure is still creating a bottleneck. The procedure could be made much less cumbersome if applications were available at RTP and Fight Back. I would like to request that you require the Union to provide such applications.
- (3) A list of the members of the "B" branch should be made available to RTP and Fight Back so that they can communicate directly with these members. If the list is not to be made available to these organizations, the list should be made

· Exhibit B

V. McDonnell, Esq.

-2-

August 7, 1973

available to you and you should communicate with, or mail communications prepared by RTP and Fight Back to, the "B" branch members.

- (4) It is my understanding that a maximum of six individuals per day will be tested under the testing program . as proposed by the Union. This I understand is caused by inability to conduct the welding portion of the test at any faster rate. Another difficulty with the testing procedure, as I understand it, lies in the fact that two tests are given at two different locations; it would be simpler to have the tests conducted in a single location. I am informed by Mr. Lee Friend that Airco can test larger numbers and do it in one location. In view of the large number of applicants and the need to have a single testing facility, I would recommend that the services of Airco be enlisted. A rate of six persons tested per day would result in the testing of only approximately 270 people between now and the end of the 90-day period; I feel certain that letters seeking applications in excess of this number will be received by the Union, if they have not already been received.
- (5) Fight Back and RTP should be given the names of individuals scheduled for testing as they are scheduled. This will make it possible for Fight Back and RTP to help insure that the individuals scheduled appear at the proper time and place.
- (6) We would like to receive information concerning the newspaper, radio and other advertisements conducted by the Union. Specifically, we would like the date on which all such advertising appeared or was broadcast and, in the case of newspapers, the page at which it appeared.
- (7) We have yet to receive copies of the application form being used by the Union. This is symptomatic of what I see as a larger problem in the administration of the decree: some decisions have been reached as to substantive matters of far-reaching import in consultation with the defendants alone (e.g. the selection of a testing mechanism as discussed in ¶4, supra). I would like to request that all parties be consulted prior to such decisions in the future.

Finally you will recall that I indicated in an earlier letter that plaintiffs were in the process of analyzing the information contained in the computer print-out of the

V. McDonnell, Esq.

-3-

August 7, 1973

apprenticeship application results. It would greatly expedite our ability to do this if we could have one set of the computer cards on which the print-out is based. It is my understanding that the provision of such a set of cards would not be expensive. I would like to request that you ask the Union to provide us with a set of these cards because of their relevance to the

affirmative action program.

I will appreciate the attention I know you will give to these matters.

Sincerely,

Dennis R. Yeager

Attorney for Plaintiffs

DRY:dl

cc: Delson & Gordon

Breed, Abbott & Morgan Joel B. Harris, Esq.

bc: Mr. Donald Roffle

Mr. James Haughton

August 13, 1973

Vincent McDonnell, Esq. Manpower Education Institute 127 East 35th Street New York, New York 10016

Re: Rios, et al., v. Enterorise
Association Steamfitters
Local 633 of U.A., et al.,
71 Civ. 847; United States
of America v. Enterorise
Association Steamfitters
Local 633 of U.A., et al.,
71 Civ. 2877

Dear Mr. McDonnell:

As I mentioned in my telephone conversation with you today, I have been informed that the union has scheduled six practical examinations for today and six additional examinations for August 16th. I also understand that no further examinations are to be conducted during the week of August 13th. As you know, only three practical examinations were conducted during the week of August 6th. In view of the fact that there are already a very large number of

applications on file and, I am informed, that many additional applications will be filed, I am afraid that we are in a situation that will not allow for the testing of all non-white applicants before October 5, 1973, when the 90 day period of exclusive admission of non-whites expires.

In view of the foregoing, I would like to urge the importance of establishing additional testing facilities as soon as possible. Likewise, it seems too obvious to merit argument that testing should be conducted each day between

Vincent McDonnell, Esq. August 13, 1973 Page 2

now and the end of the 90 day period. Limiting testing to two days per week does not result in maximum utilization of even the limited available testing facilities.

I appreciate the attention that I know you will give to this matter.

Sincerely,

Dennis R. Yeager

DRY:NB

cc: Delson & Cordon
Breed, Abbott & Morgan
Paul J. Curran, Esq.

Affidavits Opposing Plaintiffs' Motion of October15, 1973

(Rec. #72)

(Caption Omitted)

STATE OF NEW YORK) : ss.:

RICHARD BROOK, being duly sworn, deposes and says:

- 1. That he is associated with the firm of Delson & Gordon, attorneys for defendant Enterprise Association, Steamfitters Local 638 of U.A. (the "Union") and is duly admitted to practice in this Court.
- 2. This affidavit is made in opposition to plaintiffs' motion to extend the transitory provisions of the Order and Judg-ment of June 21, 1973 (the "Order").
- 3. The instant motion is untimely, in that it was not made before the expiration of the three-month transitory period, which ended on October 11, 1973. Order, ¶ D. 11, Transcript of Proceedings of July 11, 1973, page 34.
- 4. It is also submitted that plaintiffs' motion is rendered most by the Union's compliance with instructions of Administrator Vincent D. McDonnell, set forth in his letter of October 23, 1973, a copy of which is annexed hereto as Exhibit A. McDonnell directed in part that:

before incher 10. 73 shall be set down for the reactical Examination as quickly as possible. Also any certifications (D. 110) received up to October 12, 1973 will be processed. All applications received after October 12, 1973 will be held in a separate file for future consideration."

-90a-

(Affidavits Opposing Plaintiffs' Motion of October 15, 1973)

This office advised plaintiffs' attorneys of the Union compliance with Mr. McDonnell's instructions, and also that the Union would not admit any white applicants pending the return date of this motion (these representations and assurances were, in fact, the basis for plaintiffs' consent to the adjournment of this motion).

- 5. Compliance with Mr. McDonnell's instructions eliminates most of the problems raised in Mr. Packard's affidavit in support of plaintiffs' motion. Mr. Packard's affidavit contained four Exhibits, each consisting of a list of various individuals. Each Exhibit is discussed and the problems raised by each is answered by the affidavit of Mr. John J. Sheeran, Secretary-Treasurer of the Union.
- 6. The Union has fully cooperated and has taken a lead in implementing the transitory provisions of the Decree.

 The Union has spent vast sums of money for the testing program and secretarial help; days and weeks of the time of Union officers, agents and employees have been spent in working on screening, scheduling, testing, notifications, initiation into the Union according to the Local Union and United Association Constitutions, preparing lists and other record keeping requirements. The Union's elected manpower and financial resources have been so taxed by the transitory period to date that it is encumbered and rendered less efficient in performing its duty as a collective bargaining representative. Prolongation of the transitory period will further impede the Union's ability to forcefully represent

steamfitters in dealing with employers and an employer association subject to none of these burdens. The Union's cooperation can be seen by copies of correspondence from this office to the Administrator (Exhibit B hereto) and from the Administrator to Mr. Yeager (Exhibit C hereto), both in response to certain complaints raised by Mr. Yeager (Exhibit B to Mr. Yeager's aftillaria).

... the Union has well must be inland command the progress toward attaining the goal of 30% non-white membership by July 1, 1977. Order & C.8. The October 31, 1973 letter from this office to the Administrator containing initial comments on plaintiffs' proposed affirmative action programs points out that the Union's membership should be based on the number of full-time, non-retired journeymen; that the projected effect of current membership policies, e.g., the transitory period admissions, must be considered; and that attrition at the rate of 3.5% each year must be considered. Finally, a formula is presented which indicates for any set of figures used, the number of additional non-whites needed to attain the stated goal of 30% by July 1, 1977. That analysis reveals that a minimum of 279 and a maximum of 893 additional non-whites, depending upon what figures are inserted into the formula, are needed within three years and eight months to reach the goal. On a percentage basis, current policies alone will yield a July 1, 1977 minority percentage of 24.08%, if the active full-time membership is used as the base (2,500); 21.35%, if members working less than a full year are added to make a base of about 3,000; and 16.75%, if every member including retirees is counted (4,200). All of the

(Affidavits Opposing Plaintiffs' Motion of Oct. 15, 1973)
above percentages may be increased, depending upon the percentage of applicants who pass the examination. The above calculations

and analysis are set forth in a letter to the Administrator, a

copy of which is annexed hereto as Exhibit D.

Non-white membership in the Union has been increased during the transitory period. Mr. Sheeran's affidavit reveals that 116 individuals have already been initiated; an additional 106 will be initiated as of November 15, 1973, making a total of 222 individuals who have been or are to be initiated by Movember 15, 1973. Additionally, he estimates that approximately 67 more applicants, of those applicants already scheduled to take the test through November 14, 1973, will be admitted; it is also estimated that approximately 167 additional applicants will pass the test and become members from among the group of applicants to be scheduled for testing after November 14, 1973, as directed by the the Administrator. Thus, 222 non-whites are already or definitely will be initiated, and it is estimated that that number may double when those applicants who have applied in a timely fashion, and who meet the requirements of ¶ 11A of the Order are finally processed.

In light of the substantial progress to date and the fact that the goal appears to be attainable, there is no reason to extend the transitory period. Rather, the affirmative action program is a more logical means of planning the inflow of members, taking into account the various methods of entry, employment needs and job security.

It is respectfully submitted that the intent and design of the transitory period was to provide limited interim relief; it was not designed to fully achieve the 30% goal or to replace the affirmative action program. Affirmative action plans are necessarily designed to reach a set goal on a gradual basis. For example, the plan proposed by New York City would require the following percentages for steamfitters:

From 1973 Until June 30, 1974	11-12%
From July 1, 1974 Until June 30, 1975	16-17%
From July 1, 1975 Until June 30, 1976	21-23%
From July 1, 1976 Until June 30, 1977	25-28%

THE CITY RECORD
April 17, 1973
P. 1362

It should also be noted that the Union appears to have moved ahead of the City's schedule.

WHEREFORE, deponent respectfully requests that this Court deny plaintiffs' motion.

Respectfully submitted,

Richard Brook

Sworn to before me this 1st day of November, 1973.

VINCENT D. McDONNELL, Esq.

Administrator, A.A.P., U.S. v. Local 633 et al.

October 23, 1973

Vincent Brennan, Pres. Local 638, Enterprise Association, AFL-CIO 841 Broadway New York, N. Y. 10003

Re: U.S. v Local 638 et al 71 Civ 847, 2877

Dear Mr. Brennan:

We have talked of the "Transitory Provisions" of the Order and Judgement dated June 21, 1973 and of the amount of applications submitted and the maximum speed of the Practical Examination. The Practical Examination was approved by the Court on July 11, 1973. The three month period will end on October 11, 1973. Your last weekly report indicates a total of 1204 applications sent out and 613 returned. I have a list of all the names and application number sent out thru September 12, 1973. They amount to the 1204 above mentioned.

I also note from your last report that 164 have taken the Practical Examination and 505 are scheduled to take the examination thru October 31, 1973. I understand these figures have increased and will be reflected in your next report.

Now because of the number of examinations which can be given a week, and a day (13 times 5 days or 65 per week) there has been fear in certain quarters that all qualified applicants would not have the chance to take the examination. This I expressed to you was not the intent of the Order and Judgement. Therefore all applications received on or before October 12, 1973 shall be set down for the Practical Examination as quickly as possible. Also any certifications (D.11C) received up to October 12, 1973 will be processed. All applications received after October 12, 1973 will be held in a separate file for future consideration.

I sincerely hope the A.A.P. which should soon be set up will provide for an orderly procedure to comply in full

Vincent Brennan, Pres.

- 2 -

October 23, 1973

with the courts direction and establish an on going admission program satisfactory to all.

Very truly yours,

Vincent D. McDonnell

Administrator

VDM:dms

Cc: Hon. Dudley B. Bonsal
Joel B. Harris, Esq.
Ernest Fleischman, Esq.
Thomas A. Shaw, Jr., Esq.
Dennis R. Yeager, Esq.

VINCENT D. McDONNELL, Esq. dministrator, A.A.P., U.S. v. Local 638 et al.

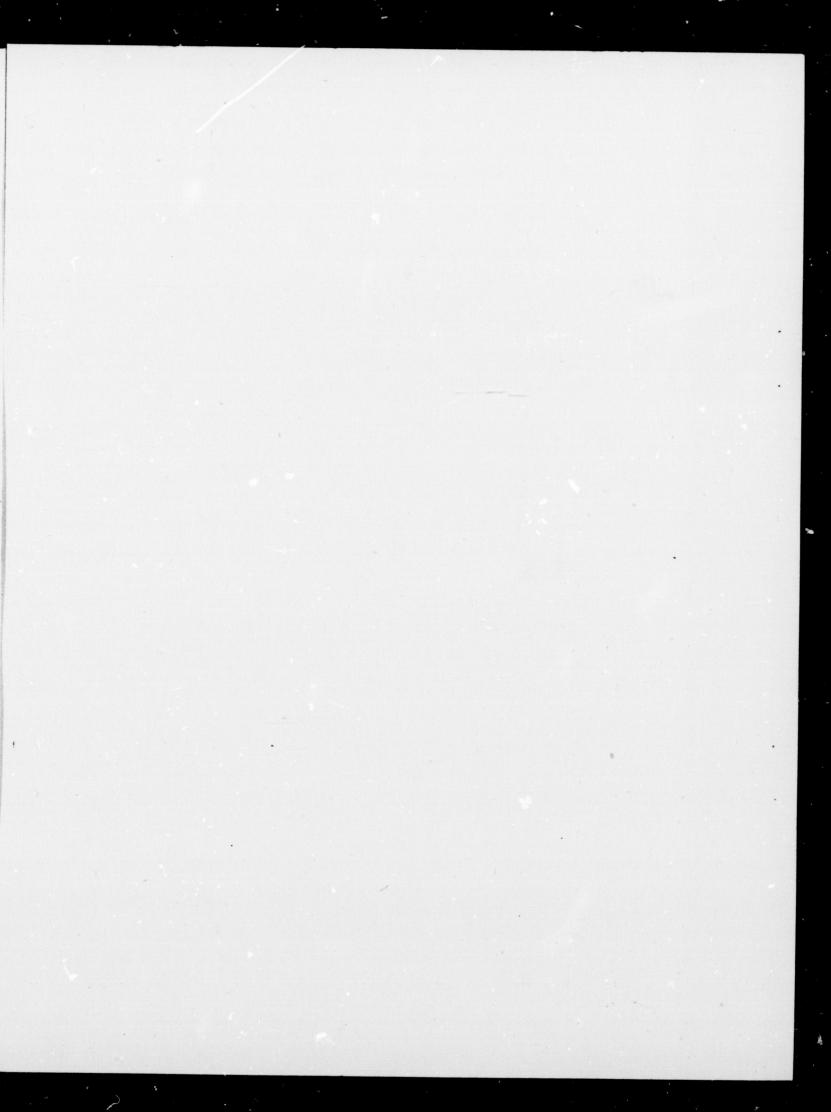
August 14, 1973

Dennis R. Yeager, Esq. National Employment Law Project 423 West 118th Street New York, New York 10027

Dear Mr. Yeager:

I have your letter of August 7, 1973.

With respect to the Leito matter I have discussed this with the Union and am awaiting a full report. The Union has stated that no one, to their knowledge, advised Mr. Leito as your (1) indicates. The question involved is in the six week certification period the employer either has not forwarded the required pension, welfare, vacation, etc. payment to the funds or the Union has no record of same. The processing is at the state of verification to assure that Mr. Leito meets the minimum requirements. If he does there should be no problem. Apparently two other members were processed quickly and this caused a serious question in Mr. Leito's mind. In any event an affidavit from the employer should clarify the matter.



Regarding your point (5) you are absolutely right that Fight Back and RTP should be given the names of all individuals scheduled for the "Practical Examination" (paragraph 13 of the Order). I have again advised the Union to be sure they "regularize" this procedure and do so (as soon as possible) on a three-week "prior to administering each examination" basis. I appreciate your concern in this regard.

Regarding (6) I enclose the only copies I have of the publicity that has been put in the Amsterdam News and La Prensa. I have directed that the Union continue this advertising on a two day a week basis all through the "transitory period." You will note that the advertising in La Prensa is in Spanish. I have also suggested they look into local radio advertising.

Sometime ago I discussed with you the content of the application form being used by the Union, your (7). In fact I ordered the question on drugs removed after talking to you. Frankly, there is no way that all parties can be "consulted" prior to all decisions. The time requirements, as it is, are very tight and the contacts magnitudinous as it is. We shall proceed as best we can and all major decisions, of course, I will discuss to the greatest extent time permits with all parties involved, my thinking. I have requested the Union immediately send copies of the application form to you and to the United States Attorney for your review and file. I have also asked a copy be sent to me.

Regarding point (4) I admit the testing procedure is slow but this is the nature of the exam and the inability to secure facilities. You mention AIRCO where a larger number of tests can be given at a single time. When you first mentioned this possibility I did talk to Mr. Lee Friend about it and immediately suggested he provide a budget indicating what the cost involved in the use of the facility would be. Mr. Herr and I indicated to Mr. Friend and his group our interest in the facility. There is no objection to enlisting the use of these facilities if they can be used at a proper time and for an appropriate cost. There surely is a question about candidates taking and examiners standing around to supervise these exams until one or two A.M. in the morning two or three times a week. Even this has not been ruled out; however, night exams such as this are least satisfactory. I am still awaiting a budget and feasibility statement from AIRCO. I clearly understand your last sentence in this paragraph. Believe me, we shall depply look into the matter and attempt to assure that no applicant is precluded the opportunity of taking the test. I have already discussed this with the Union and am working toward this end.

You have discussed with me on a number of occasions giving applications to RTP and Fight Back. You have also asked for a list of all B Branch members. I have advised on a number of occasions of the Union's strong objections and I find no provision in the Order and Judgment for such a procedure. The "transitory provisions" seem to clearly set forth the role of the Minority Recruitment sources as:

(1) have a representative on the Board of Examiners selected by the

At the JAC meeting of August 10th I advised the JAC to notify 400 apprentices they will start - 225 in September (100 Black and Spanish surnamed and 125 Whites) and 175 (75 Black and Spanish surnamed, and 100 Whites) in November. We are ahead of schedule on this portion.

Finally, I hope you appreciate that this matter is most complicated and difficult and the time requirements are extremely close. I am convicted to one proposition, that an attempt be made (and it be successful) that the Judge's Order is fully and completely implemented as to substance, form, intent and language. Where the time requirements do not permit sufficient testing in the 90-day period you may be assured that we will look into every avenue involved so that all receive the full benefit of the court's determination. It is my intent that no applicant who files within the 90-day period be precluded from taking the axam at the earliest time, thus one of your concerns should be removed.

VDM:RB Engs.

Exhibit C

october 31, 1973

Vincent D. McDonnell, Esq. Administrator, AAP 127 East 35th Street New York, New York 10016

> Re: U.S. v. Local 638, et al. Rios, et al. v. Local 638, et al.

Dear Mr. McDonnell:

This office has received and reviewed the Affirmative Action Programs proposed by the plaintiffs in the above cases. There are a great number of points made in each of the programs which the Union takes exception to, and all the points of disagreement will be commented upon within the near future. At

this time we would like to set forth for your information and consideration our analysis as to how the Union stands in relationship to the 30% non-white membership goal by July 1, 1977, as set by the Court's Order, paragraph C. 8.

Initially, it should be noted that the Order is concerned with minority membership, and not with the total size of the Union, the latter factor being dependent upon employment opportunities. Judge Bonsal acknowledged this consideration in the conference of April 25, 1973, page 60 as follows:

"...our efforts here are predicated on the minority representation and the minority jobs. I don't think I have an issue in this case at the present time that there shall be X thousand steamfitters in the City of New York. I don't think that is in this case. It is a matter of collective bargaining to a certain extent, but the issue I have is to see that the -- that people who are classified and who have the experience and who are minority people have an opportunity to be steamfitters..."

The affirmative action program as adopted should not result in an inflated membership, a result which would lead to unemployment and strife. Accordingly, the total membership at the start of the affirmative action program should be some guide as to the total membership at the end of the period; the affirmative action program should not have the effect of increasing by 50% or 100% the total membership. It is submitted that the unemployment picture will be unbearable if the membership is greatly increased by the affirmative action program. Correspondence from RTP concerning unemployed apprentices (Attachment A) and a list of projects using or planning to use electric heat indicate that unemployment is a serious consideration for this industry (see Attachment B).

In measuring where the Union stands now in relationship to the 30% goal, various assumptions and judgments must be made in determining the current and projected minority percentage of the Union's membership.

First, the base figure must be determined. The Government's proposal was based upon a figure of approximately 4,000; presumably that figure is derived from the Court's Opinion, background facts, paragraph 5, in which the Court estimated membership at 4,198. This figure, somewhere 4,000 and 4,200, represents the total Journeyman membership of the Union's Construction Branch. It would be inaccurate and unfair to use that high a figure inasmuch as all pensioners maintain their Union membership, yet are prohibited from

working as a condition of receiving their pension. Therefore, the 4,200 figure must be reduced to about 3,000 because of the approximately 1,200 individuals who are receiving pensions, disability pensions or who are now deceased. The Steamfitter Industry Fund Office will provide a more accurate estimate of these figures and that information will be forwarded to you when it is available.

In addition, the non-retired Journeyman membership figure should be further reduced by the number of individuals who work less than a full year of 1,750 hours. Thus, as Mr. Hopkins, an employer witness, testified at the trial, approximately 500 employees are moonlighters, elderly gentlemen who cannot work a substantial number of hours, or employees who choose not to work with any frequency. See Attachment C. Transcript of January 26, 1973, pages 1128-1130, 1134 (Hopkins testimony); see also transcript of January 17, 1973, pages 494-495 (Courtney testimony). Copies of those pages are annexed hereto. This point was also raised by Mr. Shaw, counsel to MCA; at the conference of June 1, 1973, transcript page 40, wherein he stated that:

"The evidence established that there are, I think, something like 4,000 holders of A cards in the union. However, that includes about 800 who are retired pensioners. There are also a large group who only work part-time. I take it that what should be considered here, I guess, is a percentage of the active work force or perhaps it should be a percentage of hours worked or something like that."

Thus, the base figure should be approximately 2,500 for purposes of measuring the Union's attainment of the goal of 30%.

Second, the fact of attrition by means of retirement, disability and death, should be taken into account. The Government on page 3 of its proposal, recognized this point:

"In reality, there is an attrition rate, due to retirement and health reasons, of approximately 3.5% per year ..."

The Government stated that the estimate was based upon George Moskowitz's Study in the Local 46 case which in turn was based upon a national survey undertaken by the Bureau of Labor Statistics and accepted by the Second Circuit in affirming the order based therein. U.S. v. Local 46, 471 F.2d 408 (2nd Cir. 1973), cert. denied, U.S. (1973). As the Government further noted, "Since most of these older men will be whites, the union should be given the benefit of this attrition each year in calculating the attainment of the non-white goal."

Thus, the current programs as projected forward to July 1, 1977, more than four and one-half years from the date of the Decree, with an attrition rate of 3.5% per year of the base figure, results in a total of 15.75% (4.5 years x 3.5%) for the entire four and one-half year period which must be subtracted from the base figure of 2,500 (384), 3,000 (473), or 4,200 (662).

Third, projection is needed to accurately measure the Union's progress toward attaining the goal; all present and currently planned methods of entry should be counted. Thus, current apprentices, the second part of the class of 400 apprentices, New York Plan Trainees as well as projected additional direct admissions resulting from the transitory period should all be counted.

Fourth, an estimate of transitory period of admissions must be made. This analysis uses a conservative 30% as contrasted to the Government's 50% as the estimated percentage of additional individuals to be tested as a result of the transitory period who will achieve passing grades and therefore membership. Of course, if more than 30% pass, the Union will be that much further along in meeting the goal.

The formula used herein and urged for your consideration and adoption is as follows:

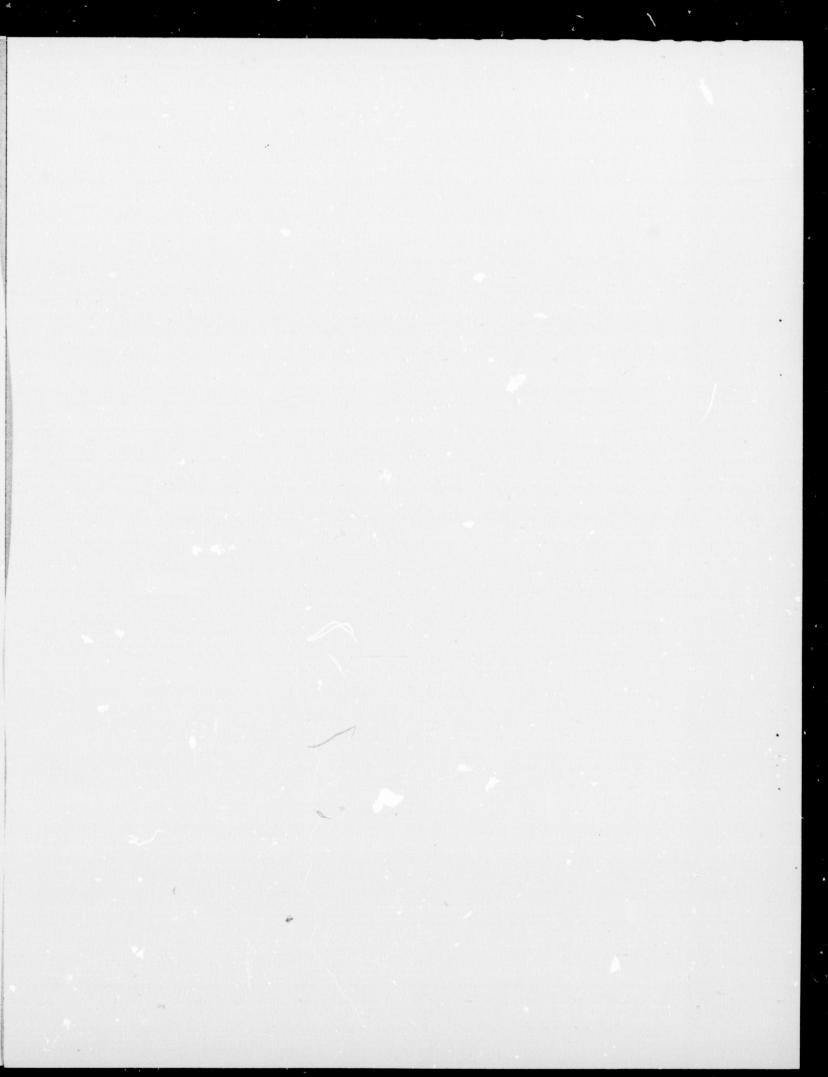
P = The fraction of new members who are non-white N = The number of new members

Present number of non-whites + P N = 30% Goal

Thus, the top line would include the total number of non-whites who, under current programs, will be in the Union by July 1, 1977, i.e., non-whites presently in the Union plus the fraction of new members who will be non-whites; this figure is divided by the total projected membership in July, 1977 which consists of the present total, or base, less attrition, plus the total number of new members, white and non-white. This formula will indicate the number of additional non-whites needed to reach the goal of 30% non-white membership by July 1, 1977.

The attached charts (Attachment D 1, 2, 3) indicate the respective bases, the current non-white membership, and the percentage of non-whites as affected by each of the presently planned methods of entry.

The above formula is then illustrated with each of the three bases (Attachments E 1, 2, 3). For purposes of simplification, it is assumed that P = 1, i.e., that until



the goal is reached, all admissions other than currently planned apprentices will be non-white; after the 30% goal is reached, three out of ten new admissions would have to be non-white.

We appreciate your consideration of these comments.

Very truly yours,

DELSON & GORDON

Richard Brook

RB:nd Encls. cc:

Joel B. Harris, Esq. Dennis R. Yeager, Esq. Thomas A. Shaw, Jr., Esq.

EXHILIT D



TOTAL	OTAL JOURNEYMEN	NON-WHITE MEMBERSHIP
Pase figures - Jan. 1973	3,000 [members working less than full year included]	191
Plus newly admitted non-whites and non-whites scheduled for admission 189 (114 already admitted)	3,189	380
Plus additional admissions from applicants during transitory period who have (212) or will be (270) scheduled to take the test 482 x 30% estimated passage rate = 145	3,334	525
Less: Attrition: 3.5% x 4.5 years = 15.75% x300-472.5 = 473 subtracted from original base	2,861	525
Plus New York Plan Trainces: 77	2,938	602
Plus Apprentices: 376 total 16 non-white as of Court Order; 225 total, 100 non-white per new class; 175 total 75 non-white per second class ordered by Court; = 776 total; 191 non-whites		793
Total projected in four years	3,714	<u>793</u>
	ATPTA TOWN TO D-0	

NON-WHITE' PERCENTAGE	DATE
6.36%	1/73 · .
11.91%	Approx. 11/15/7
15.74%	Approm. Jani
18.35%	July 1, 1977
20.49%	July 1.
21.35%	July 1. 1977
21.35%	July 1 1977

TOTAL JOURNEYMEN (Includes retired, disabled and deceased members and those work-NON-WHITE N TOTAL ing less than a full year MEMBERSHIP P mase Figures, of Decree's Figures Jan. 1973 4,200 191 Plus newly admitted non-whites and non-whites scheduled for admission 159 (114 already admitted) 4,389 380 Plus additional admissions from applicants during transitory period who have (212) or will se (270) scheduled to take the test = 400 x 30% estimated purrage rate 4,534 1:15 525 less attrition: $3.5\% \times 4.5$ years = 15.75% = 6.1.5 = 662 subracted 3,872 from original base 525 602 Plus New York Plan Trainees: 3,949 Plus apprentices: 376 total, 16 non-white as of Court Order; 225 total, 100 non-white per new class; 175 total, 75 non-white per second class ordered by 4,725 Court or 776 total: 101 non-whites 793

Total projected in four years

ATTACHT P-3 /

4,725

ON-WHITE ERCENTAGE	DATE ·
4.54%	Jan. 1973
8.65%	Approx. Nov. 15, 1973
11.57%	Approx. Jan. 1974
13.55%	July 1, 1
15.24%	July 1, 1
16.75%	July 1, 1
16.75%	July 1, 1
	-104a-

PROJECTION FORMULA TO DETERMINE THE NUMBER OF ADDITIONAL NON-WHITES NEED TO ACHIEVE GOAL OF 30% BY JULY 1, 1977 - BASE OF 2,500

 $\frac{\text{\# of non-whites in Union by 7/1/77}}{\text{Total # of members in Union by 7/1/77}} = 30\% \text{ goal or .3}$

Present # of non-whites and non-whites as fractions
of all new members

Present # of total members (less attrition) and
total # of all new members

 $\frac{793 + P N}{3,293 + N} = .3$ (Assume P = 1, <u>i.e.</u>, only non-whites added in addition to whites and non-whites already in process of entry, <u>e.g.</u>, apprentices)

793 + N = .3 (3,293 + N)

793 + N = 988 + .3 N

.7 N = 195

N = 195

N = 279 = # of additional non-whites needed to meet 30% goal

This figure might be too high if, e.g., the government's estimate of 59,5 passage rate on the exam is more accurate than our estimate; also, some of the 191 applicants rejected so far because of lack of experience may be qualified upon reevaluation. Thus, as many as 200 more nonwhites may eventually be admitted under the current program. It is suggested that the figures in this analysis and in the government's analysis must be updated at the time when the results are known as to all current applicants being processed under the transitory provision. The essential point is that the total number, yet undetermined, of additional non-whites needed to reach the goal is manageable. After said goal is reached, it can be maintained as long as 30% of all new entrants, from all sources, are non-white. The numbers, at that point, should be determined by the Union, after consultation with you, in light of the then existing employment needs.

PROJECTION FORMULA TO DETERMINE NUMBER OF ADDITIONAL NON-WHITES NEEDED TO ACHIEVE GOAL OF 30% BY JULY 1, 1977 - BASE OF 3,000 (INCLUDES MEMBERS WORKING LESS THAN FULL YEAR)

$$\frac{793 + P N}{3,714 + N} = .3$$

$$\frac{793 + N}{3,714 + N} = .3$$

$$793 + N = .3 (3,714 + N)$$

$$793 + N = 1,114 + .3N$$

$$.7 N = 321$$

$$N = \frac{321}{.7}$$

$$N = 458.5$$

= 459 = # of non-whites, in addition to those in process of becoming members, needed to reach goal of 30% by 7/1/77; thereafter, goal can be sustained if 30% of total new members are non-white.

ATTACHMENT E-2

PROJECTION FORMULA TO DETERMINE THE NUMBER OF ADDITIONAL NON-WHITES NEEDED TO ACHIEVE GOAL OF 300 BY JULY 1, 1977 (BASE - 4,200 - INCLUDES RETIRED, DISABLED AND DECEASED MEMBERS AND MEMBERS WORKING LESS THAN A FULL YEAR)

$$\frac{793 + PN}{4,725 + N} = .3$$

$$793 + N = .3 (4,725 + N)$$

$$793 + N = 1,418 + .3 N$$

$$.7N = 625$$

$$N = 625$$

$$N = 892.8$$

= 893 = # of additional non-whites needed to meet 30% goal

ATTACHMENT E-3



(Caption Omitted)

STATE OF NEW YORK) SS.:

JOHN J. SHEERAN, being duly sworn, deposes and says:

- 1. I am the Secretary-Treasurer of Enterprise Association Steamfitters Local 638 of U.A. (the "Union") and in that capacity I am charged with the duties of record keeping, correspondence, scheduling of tests and processing of applications in implementing the Union's duties under the transitory period of the Court's Order, in addition to the duties that I am sworn to uphold under the Local Union Constitution and under the Constitution of the United Association to administer the financial aspects of the Union.
- 2. This affidavit is made in opposition to plaintiffs' motion to extend the transitory period of the Court's Order.
- 3. The Union has gone to extraordinary lengths in terms of time, effort and money to fulfill its responsibilities under the Order and under the various rulings of the Administrator. Several office secretaries otherwise not required, are engaged full time in record keeping and correspondence required by Judge Bonsal's Order of June 21, 1973; most of my time and that of the Business Agents, whose duties according to our Local Constitution require them to attend to steamfitting construction problems in the field, is devoted to the screening of requests for applications, the scheduling of qualified applicants and the reviewing of

results of the practical testing. These business agents have been required to speri days and in some instances weeks in assisting this office staff to process the enormous volume of material relating to the aforementioned problems. By a conservative estimate, the Union has already spent over \$31,000 during 1973 in connection with the implementation of this Order. This Union cannot function effectively as a collective bargaining representative of the steamfitters in the mechanical contracting industry in our territorial jurisdiction if its elected manpower and funds continue to be expended on the transitory provisions of this Federal Court Order.

- 4. In light of the great efforts put forth by this organization, it is distressing and unfair for plaintiffs to ignore facts within their knowledge and to imply that the Union is somehow obstructing the transitory period.
- 5. Mr. Packard's affidavit speaks in terms of names and numbers as of September 28, 1973; the plaintiffs' motion papers are dated October 15, 1973; between those dates many of the problems raised by plaintiffs were eliminated and additional information was furnished to RTP, yet those facts are not mentioned or acknowledged in Mr. Packard's affidavit.

Periodically I have sent reports to RTP and Fight Back, indicating the name, application number, and in most instances the addresses of each applicant; that information, plus additional data has been submitted to Mr. McDonnell with copies sent to Messrs. Harris and Yeager.

Annexed hereto as Exhibit A are copies of the following letters which accompanied a cumulative report as of September 17,

1973, concerning application numbers up to number 1204: leter to the Administrator; letters to Mr. Harris and Mr. Yeager; letters to Mr. Ernest Green of RTP and Mr. John Houghton of Fight Back.

The information sent to RTP, as seen from the letter to Mr. Green and Houghton includes information concerning the test schedules of those individuals referred to in Exhibit D to Mr. Packard's affidavit; copies of those test schedules are also attached.

A subsequent listing, as of October 10, 1973, of individuals scheduled for testing through November 14, 1973, was sent, for a cumulative total of 612 applicants so scheduled.

Annexed hereto as Exhibit B is a supplemental list of applicants' names and application numbers, containing information not available at the time the September 17, 1973 reports were prepared. I personally handed Mr. Packard a copy of this list on October 10, 1973.

Annexed hereto as Exhibit C is a notation indicating the fact that the list of scheduling the welding test for 49 individuals was personally handed to Mr. Johnson of RTP by my secretary on October 4, 1973.

Annexed hereto as Exhibit D is a report of October 29, 1973 submitted to Mr. McDonnell, concerning applications and testing schedules as of October 15, 1973; the list of applicants and application numbers up to application number 1571 as well as a list of those scheduled to take the exam through November 14, 1973 was sent to Mr. McDonnell, Mr. Harris and Mr. Yeager, as well as to RTP and Fight Back.

6. The following figures indicate the current state

of the application procedure under the transitory provisions, as of November 1, 1973:

A. Number of applications mailed out by Union

1,571

B. Number of applications returned to Union

1,073

The following disposition was made of the 1,073 returned applications as of November 1, 1973:

 applicants previously scheduled for testing

504

2. applicants already scheduled for testing through Hovember 14, 1973

103

3. applicants that will be scheduled for testing beyond Hovember 14,

1), 3 pursuant to the Administrator's instructions

. 270

4. applicants with questionable experience whose applications will be reviewed again after those applicants who are already found qualified are tested; applicants who are qualified will be scheduled for testing and those not qualified w be notified of failure to meet requirements of paragraph 11(a) of Order.

191

1,073

C. Number of applicants as of this date who have been or will be initiated by November 15, 1973 as follows pursuant to ¶ 11(a) (b) and (c). This figure increases daily and will continue to increase as additional applicants qualify

1. already initiated

116

will be initiated as of November 15, 1973

106

222

D. Projected Number of Additional Applicants that will Become Members

As of this date 108 applicants are scheduled for testing through November 14, 1973 in accordance with the instructions of the Administrator. Although the test results of some recent individuals indicated a passing rate as low as 30%, the most recent test results, received by this office on October 26, 1973 indicate that 95 out of 153, or 62% passed. On the basis of this most recent result, it is projected that 62% of the 108, or 67 additional applicants will pass the test and be duly initiated into this Union as soon as possible.

E. Further Projected Additional Applicants that will Become Members

In addition, 270 applicants whose applications were received on or before October 12, 1973 will be scheduled for testing after November 14, 1973 as directed by the Administrator. Applying the formula of D above, 62% or 167 additional applicants will pass the test and become members.

- 7. The specific points raised by Mr. Packard's affidavit have no merit at this point in light of the previous procedures followed by the Union and the Union's compliance with Mr. McDonnell's directive.
- Exhibit A to Mr. Packard's affidavit is a list of 116 individuals who applied for but did not receive applications as of September 23, 1973. The Union has mailed out applications to every individual requesting them. It should be obvious that this organization has no reason to deny any request for application, thus, if these 116 individuals requested applications in

(Affidavits Opposing Plaintiffs' Motion of Oct. 15, 1973), writing, applications were sent out to them.

Exhibit B to Mr. Packard's affidavit is a list of 141 individuals who supposedly did not receive applications as of September 28, 1973, although the Union states that an application number was assigned.

The Union has periodically sent lists to RTP and Fight Back indicating applicants' names, application numbers, addresses of applicants. Obviously, if an application number is assigned to an individual, that individual was sent an application with that number.

Exhibit C to Mr. Packard's affidavit is a list of 171 individuals who, as of September 28, 1973 allegedly received and returned applications, but had not yet received a test date. If those individuals returned their applications on or before October 12, 1973 they have been assigned a test date or will be scheduled for testing in accordance with Mr. McDonnell's directions; or, they are among the 191 applicants who did not have the experience required by ¶ 11(a) of the Order.

Exhibit D of the Packard affidavit lists 49 individuals who had taken only one phase of the exam. Mr. McDonnell had suggested in late August or early September that in order to possibly expedite the testing, some individuals should be allowed to take the exam in two phases; all of these 49 individuals were subsequently scheduled for the second part of the test on October 9, 10, 11 and 12, 1973, RTP was advised of these facts on October 4, 1973, at which time my secretary personally handed Mr. Johnson of RTP a copy of the welding test schedule at the Union office, RTP was also notified of shear

facts in that the welding test schedule referred to was contained in a report mailed to RTP by letter dated September 28, 1973, and finally, the individuals scheduled for these welding tests were notified on September 20, 1973. All of these notices preceded the date of plaintiffs' motion, October 15, 1973.

Paragraph 4 of Mr. Packard's affidavit claims that RTP has been unable to contact all individuals who may be eligible to take the test, e.g., the New York Plan Trainees. RTP has had months to contact all potential applicants and has contacted many people already.

Mr. Packard states that he has an extensive file of individuals who have an interest and experience in steamfitting. On this point, I fail to comprehend why he has been unable to contact the individuals on file whom he claims may be appropriate for testing, especially since he has had months to do so.

The second part of paragraph 4 of his affidavit, relating to the New York Plan seems to be incongruous with the situation as he states it. The names and addresses of individual Trainees involved in the steamfitting industry under the New York Plan for Training, Inc. are certainly available to any interested party such as RTP.

8. In conclusion, it should be noted that many of the apprehensions expressed by plaintiffs may have been due to the large disparity between the number of applications mailed out and the number returned, and because of the two week time span between the information Mr. Packard based his affidavit on and the date of plaintiffs' motion, and the date of this document.

I respectfully urge this Court not to extend the transitory period because of the incredible burden that this procedure places on the Union's resources, because of the Union's compliance with all requirements and deadlines of the Decree, and because of the fact that substantial numbers of individuals already have been and will be admitted to the Union under the transitory provisions, so that substantial progress has been made toward attaining the goal set for July 1, 1977.

WHEREFORE, deponent respectfully requests that this Court deny plaintiffs' motion.

/S/ John J. Sheeran

Sworn to before me this lst day of November, 1973.

/S/ Notary Public

September 17, 1973

Vincent D. Mc Donnell, Esq. 127 East 35th Street New York, N.Y. 10016

Dear Sir:

Please be advised of the following figures in relationship to your request of August 2, 1973:

P	0 3	our request of Musust 2, 1973.	6
1	-	Number of Metal Trades members transferred to the Building Trades branch	20
2		Number of others admitted (directly into the Building Trades branch	2 ¹ +
. 3	-	Member who have taken the practical test	164
		(a) 68 passed (b) 47 failed (c) 49 passed the fitting part and are rescheduled for the welding or brazing part on October 9, 10, 11, 12.	
4	-	Number who are scheduled to take the practical examination through October 31	505
5	-	Total applications mailed	1204
6	-	Total completed applications returned	613
7	-	Number of applications returned with questionable experience	81
8	-	Number of employees certified by contractors but not verified by the Steamfitting Industry Funds office	5
9	- .	Number of undelivered applications returned	16
10	-	Number of undelivered notices for examinations returned	6
		ete list of numbered applications and date eded.	
Complete list of persons notified to appear for			

Copies of advertising tear sheets.

practical test



Sincerely yours,

JOHN J. SHEERAN SecretarymTrcasurer

jjs/cd encls.

P.S. Also enclosed are the following:

a - Job Location Register

b - Employment Lists

c- Contractors requests for steamfitters.

J.J.3.

CC - Yeager Harris

Exhibit A

of R.T.P.

scheduled for Oct. 9, 10, 11 12

'Mr. Green's copy a copy for Mr. Johnson

10-4-73

Handed Mr. Packard of R.T.P. 10-10-73 copy of Shir supplemental list (missing appl. #)

Exhibit C

October 29, 1973

Vincent D. Mc Donnell, Esq. 127 East 35th Street New York, N.Y. 10016

Dear Mr. Mc Donnell:

Please be advised of the following figures in relationship to your request of August 2, 1973:

elationship to your request of August 2, 1973:			
. 1 -	Total applications mailed	1571	
2 -	Total completed applications returned	1073	
3 -	Number of undelivered applications	46	
4 -	Number of applications returned with questionable experience	191	
5 -	Number of undelivered notices for examinations returned	14	
6 -	Total number of applications scheduled to take the practical examination through November 14, 1973	612	
7 -	Number who have taken practical test 176 Passed 130 Failed	306	
8 -	Number of Metal Trades members transfor to the Building & Construction Trades division	rred	
9 -	Number of others admitted directly into Building & Construction Trades division	on 79	

Complete list of numbered applications and date forwarded (from 9-17-73)

Complete list of persons notified to appear for practical test (through 11-14-73)

Copies of advertising tear sheets.

Sincerely yours,

John J. Sheeran Secretary-Treasurer

jjs/cd encls.

cc - Yeager Harris

P.S. Also enclosed ate the following:

a - Job Location Register

b - Employment lists

c - Contractors requests for steamfitters

Exhibit D

October 29, 1973

Mr. John Houghton Fight Pack 1 East 125th Street New York, N.Y.

Dear Sir:

Enclosed please find list of those applicants who have been forwarded applications for membership in this organization and the date forwarded.

A complete list of those scheduled to take the practical examination through November 14, 1973 is also enclosed.

Sincerely yours,

JOHN J. SHEERAN Secretary-Treasurer

October 29, 1973

Mr. Ernest Green Recruitment Training Program 162 Fifth Avenue Hew York, N.Y. 10017

Dear Sir:

Enclosed please find list of those applicants who have been forwarded applications for membership in this organization and the date forwarded.

A complete list of those scheduled to take the practical examination through November 14, 1973 is also enclosed.

Sincerely yours,

JOHN J. SHEERAN Secretary-Treasurer

Joel B. Farris, Esq.
Asst. District Attorney
Southern District of New York
United States Court House
Foley Square
New York, N.Y. 10017

October 29, 1973

Dear Sir:

3

We are enclosing the following:

- 1 Complete list of numbered applications and date forwarded
- 2 Complete list of persons notified to appear for practical test through November 14, 1973
- 3 Copies of tear sheets
- 4 Copy of my letter to Vincent D. McDonnell, Esq. with information he requested.

. Sincerely yours,

JOHN J. SHEERAN Secretary Treasurer

October 29, 1973

Dennis R. Yeager, Esq. National Employment Project 423 West 118th Street New York, N.Y. 10027

Dear Sir:

We are enclosing the following:

- 1 Complete list of numbered applications and date forwarded
- 2 Complete list of persons notified to appear for practical test through November 14, 1973
- 3 Copies of tear sheets
- 4 Copy of my letter to Vincent D. Mc Donnell, with information he requested.

Sincerely yours,

JOHN J. SHEERAN Secretary Treasurer

jjs/cd encls. 4

Applicants' Motion for Preliminary Injunction and to Hold Defendant Union in Contempt (Rec. #82)

(Caption Omitted)

SIRS:

PIEASE TAKE NOTICE THAT upon the affidavit of JOHN GUNTHER, sworn to the 20th day of April, 1974 and annexed hereto, and upon all other papers and proceedings herein, the undersigned will move this Court on the 6th day of May, 1974, at 9:30 P.M. or as soon thereeafter as counsel can be heard, in Room , United States Court House, Foley Square, New York, New York, for an order pursuant to Rules 65 and 70, FRCP, holding and finding the defendant, Enterprise A sociation, Local 638, its officers, employees, agents and attorneys, and any other persons in active concert or participation with it, in contempt of this Court's orders of November 20, 1973 and March 29, 1974, and enjoining and directing said defendant, its officers, employees, agents and attorneys, and all other persons in active concert or participation with any of them, to forthwith comply with the terms of the said orders in respect to the giving of applications to persons requesting them, the processing of those applications, and the acceptance into membership of the "A" local of such persons, and in particular as tegards persons other than non-white and Spanish-surnamed applicants qualified for such membership under the terms of this

(Applicants' Motion for Preliminary Injunction, ETc.)

Court's orders; and further enjoining and restraining defendant, Enterprise Association Steamfitters Local 638 from causing or attempting to cause any employer to discharge discriminatority or otherwise discriminate against any person by reason of his participation in this proceeding or his support for the application made by and on behalf of "B" members to intervene herein; and for such other, further and different relief as may be appropriate.

Yours, etc.,

BURTON H. HALL
Attorney for Applicants
to Intervene
401 Broadway
New York, N.Y., 10013
(212) 431-9114

(Caption of Supporting Affidavit Omitted)

STATE OF NEW YORK) ss.:

JOHN GUNTHER, being duly sworn, deposes and says:

l. I am one of the seven named applicants to intervene herein, whose petition for intervention is already before this Court; I am fully familiar with the facts set forth herein; and I make this affidavit in support of the applicants' motion for

(Applicants: Motion for Preliminary Injunction, Etc.)

preliminary injunctive relief and to hold certain of the defendants in contempt of this Court's orders.

- 2. I am advised by counsel that copies of our application to intervene herein, with supporting papers, were served upon the parties in these actions by mail on April 8, 1974, and that in conversations had on April 1 and later in the week of April 1, counsel for the applicants informed counsel for the union defendant that such application would be made. The union defendant has acknowledged receipt of the motion papers in telephone conversations with our counsel.
- 3. On April 19, 1974, three of the seven named applicants to intervene, including myself, were discharged from employment as steamfitters upon demand of Local 638, in order to make room for and be replaced by members of the "A" local. All three -- myself, plaintiff Charles T. Farrell and plaintiff Hugh Donnegan -- were discharged by the same employer, Afgo Engineering Corporation, for whom we had worked for periods varying from eight years (in plaintiff Farrell's case) to three years (in my case). Our jobs are expected to continue for at least a year and most probably for considerably longer; however they are now filled by "A" members.
- 4. On the day before the layoff or discharge, Local 638's business representative in Brooklyn, Ray Bresmahan, came to my job site at the Starret City project and demanded from the shop

(Applicants' Motion for Preliminary Injunction, Etc.)

picked out myname, although I had been working there longer than most permit men. The next day I was informed bythe foreman that I was discharged. When I asked the reason, the foreman said that my work was satisfactory but that the "A" localhad demanded that all "B" men be replaced by "A" men and my name was picked first. On the same day, plaintiffs Farrell and Donnegan were fired from their jobs on another Afgo jobsite in Riverdale; there were seven "B" men working on that jobside under an foreman who is a member of the "A" local. Farrell and Donnegan had the most seniority of all with the company, yet they were picked to be fired first, apparently because of the seven men there these two were the only named applicants to intervene in this proceeding.

- 5. It is apparent that the selection of named applicants to intervene to be fired or laid off first among all "B" men working in Local 638's area is, and is intended to be, a reprisal for our having made application to intervene on the side of plaintiffs in these two (combined) cases. Since such reprisal is itself an interference in this judicial proceeding, it falls, I am advised, within this Court's ancillary jurisdiction.
- 6. I am advised by counsel that immediately prior to the discharges, counsel for the defendant Local 638 and for certain other parties orally requested an adjournament of the return date

99.

(Applicants' Motion for Preliminary Injunction, ETc.)

of the application to intervene. The discharges took place almost immediately after our connsel agreed to the adjournment.

- 7. Meanwhile, we appear to be getting a runaround from both Local 638 and the Administrator. Our inquiries to Mr. McDonnell concerning our applications have been rejected with the statement that the matter was in the hands of the union. But when we make inquiry of the union we are referred back to the Administrator if not worse.
- 8. On January 5, 1974, I wrote to Mr. McDonnell describing my situation. He sent my letter back to me with certain markings on it, and the following message scribbled at the end:

"Dear Mr Gunther.

The matter of admission to the 'A Branch' is one in the authority of the union. I'm sorry that I can not be of help to you. You should continue to contact the union on the matter.

VD McDonnell.

9. Yesterday, April 19, 1974, I telephoned Local 638 and spoke with its Secretary-Treasurer, John Sheeran. He told me that this entire matter is in the hands of the Administrator. I told him that the Administrator had advised me that it was in the union's hands. After a further discussion, in which Mr. Sheeran asked my opinion regarding the union and the "B" men, Mr. Sheeran told me that I should not have received an application at all, since I am white and not Spanish-surnamed. When I advised him that I was familiar with the Court's order and that it calls for applica-

(Applicants' Motion for Preliminary Injunction, ETc.)

tion forms to be issued to whites after three months following June 21, 1973, he refused to speak with me further and hung up, laughing.

above, to be a refusal to process any application made by me or by any other "B" man who is neither non-white or Spanish-surnamed for membership in the "A" local. This understanding is buttressed by the failure of the union to respond to any of the applications submitted either by myself, or by ma fellow applicants, or by any other white "B" member.

11. Mr. Sheeran's refusal to entertain my application, and to entertain the applications of other "B" members, other than non-white or Spanish-surnamed ones, both pre-dates and post-dates the date of entry of the Affirmative Action Program. Such refusals are therefore in violation, and in flagrant violation, of that Program as well as this Court's order of November 20, 1973. Those refusals, as well as the apparent disinclination of the Administrator to take action, underscore the need for intervention on behalf of the class of "B" members other than those who are non-white or Spanish-surnamed. Additionally, such refusals appear to me to be in contempt of this Court's orders. It is for that reason that I ask the Court to impose suitable penalties and remedies for the contempt of its Orders on the part of defendant Enterprise Association,

J.

9.

(Applicants' Motion for Preliminary Injunction, Etc.)

Local 638 and on the part of any person or persons participating in that contempt.

- 12. Unless otherwise ordered by this Court, defendant Local 638, and other persons in participation or concert with it, will continue to act in contempt and violation of this Court's Orders and will continue to levy reprisals against applicants to intervene herein; and by so doing will cause grievaus and material injury to deponent and the other applicants for which thre is no adequate remedy at law.
- 13. No previous application for the relief requested herein has been made.

WHEREFORE, deponent prays that applicants' motion to hold defendant Local 638 and other persons in concert or participation with Local 638 in contempt, and to impose suitable penalties and remedies, and to enjoin defendants from further reprisals against the applicants to intervene, be granted.

Sworn to before me this 20th day of April, 1974

Notary Public, State of New York 24 0732129 - Qual, in Klass Commission Expires March 30, 1974

Opposing Affidavit of John Sheeran: Remaining Portions (Rec. #88)

NOTE: Paragraphs 9 through 12 of this affidavit, designated for inclusion by Appellants, are reprinted at pages 32a-34a, supra. The remaining portions of the affidavit, designated by Appellees, is reprinted below.

(Caption Omitted)

STATE OF NEW YORK)
COUNTY OF NEW YORK)

JOHN J. SHEERAN, being duly sworn, deposes and says:

- 1. I am the Secretary-Treasurer of Enterprise
 Association, Steamfitters Local 638 of the U.A. (hereinafter
 referred to as the "Union") and make this affidavit in
 opposition to the motion for contempt brought against the
 Union.
- 2. As the Union officer charged by the Union's constitution and the constitution of the U.A., with the keeping of records and documents as well as my duties as principal financial officer of the Union, I have been intimately and directly involved with the recordkeeping requirements and procedures required of this Union by this Court pursuant to the Orders issued in this civil rights case.
- 3. Most particularly I am the officer who was and is in charge of the receipt, dissemination and processing of applications during the transitory relief

(Opposing Affidavit of John Sheeran: Remaining Portions)

period, and made frequent and voluminous reports to the Administrator as required by this Court's Order.

- 4. On the basis of my reading of this Court's Orders, after discussion with my fellow Union officers, advice of counsel, and after consultation, discussion and receipt of direction from the Administrator the following course of events has transpired in terms of the applications of whites.
- 5. The June 21, 1973 Order of this Court, provided in Paragraph 11 that:
 - "11. Following the issuance of this decree, and for the first 3 months following the adoption by the Court of the practical examination referred to in paragraph 13, infra,—unless extended by the Court upon application of any of the parties—Local 638 shall admit as full journeyman members of its A branch only graduates of the apprentice program and non-whites who apply in writing and who meet the following conditions:..."
- 6. By virtue of Paragraph 11 the three month transitory period commenced on or about July 12, 1973.

 By the very terms of the June Order whites were precluded from admission to this Union.
- 7. In accordance with Paragraph 11 and the other provisions of the June Order and in accordance with the August 13, 1973 directive of the Administrator, a copy of which is attached hereto as Exhibit A, the Union sent

(Opposing Affidavit of John Sheeran: Remaining Portions)

a letter, dated August 14, 1973, a copy of which is attached hereto as Exhibit B, to all members of the Metal Trades

Branch advising of the opportunity accorded under the Order to non-whites.

8. Upon information and belief, all parties to this lawsuit were surprised at the large number of non-white applicants who applied during this three month period; I have been advised by counsel that the Rios plaintiffs made a motion to this Court to extend the transitory period until December 31, 1973 for the purpose of processing the aforesaid non-whites who had applied during the transitory period.

* * *

13. As a result of the April 22 meeting with the Administrator, the procedures for processing white applicants has been in large part determined and specific actions have been implemented pursuant thereto. Specifically, approximately 116 white individuals whose applications were made between June 21, 1973 and December 31, 1973 have already been scheduled for the Court-approved practical examination; the first such examination is scheduled for May 13, 1974 and daily thereafter at the rate of 12 men per day until the 116 are tested. Attached hereto as Exhibit C is a copy of the Union's letter sent to the aforesaid individuals together with instructions as to how to get to the test site and a description of the

14. Additional individuals who requested applications during the June through December period will be subsequently scheduled for taking the practical examination in accordance with the directions of the Administrator.

examination.

Action Plan adopted by this Court and the direction of the Administrator, a notice will be sent out within the week advising all members of the Metal Trades Branch of their right to apply for membership applications. A copy of that letter is attached hereto as Exhibit D. Said letter is at our printer's and upon return from same, will be sent out to the entire membership of the B branch.

Attached hereto as Exhibit E is the application for membership form to be sent along with the aforesaid letter.

16. This Union has acted in the utmost good faith in implementing all portions of this Court's Orders, those which it liked and those which it did not like; those which were easy to follow and those difficult; those which benefit non-whites and those which benefit whites. No other party to this proceeding has had to actually perform actions and refrain from actions on the scale and to the extent and degree as required by this Court's Orders.

The time between the March 31, 1974 date in which the Affirmative Action Plan became effective and April 22, 1974 when the aforesaid policies were established by the Union in conjunction with the

(Opposing Affidavit of John Sheeran: Remaining Portions)

Administrator, less than a month, was a reasonable period and the shortest possible period during which this could be done. The Union has moved with dispatch to implement the policy as formulated April 22, 1974.

- myself to the specific factual allegations raised in Mr. Gunther's affidavit sworn to Apil 20, 1974. As to the allegations in Paragraph 7, Mr. Gunther apparently admits although indirectly that the Union was in fact acting pursuant to the direction of the Administrator in the manner and method in which the application procedure for whites was established; the impatience shown by Mr. Gunther indicates the need to preclude such individuals from the already complex multi-party lawsuit into which they seek to intervene.
- I did speak with Mr. Gunther by telephone on or about April 19, 1974 during which time I advised him that the applications procedures and processing for whites is a matter which is outlined and governed by the Court's Orders under the guidance of the Administrator. I advised him that the Union was awaiting direction from the Administrator concerning implementation of the Court's Orders as it applied to whites; I did not laugh and did not refuse to speak with him further.
- 19. The allegations of Paragraph 10 of Mr.

 Gunther's affidavit are answered in the above portions of

(Opposing Affidavit of John Sheeran: Remaining Portions)
this affidavit; it is clear that the Union is not refusing
to obey this Court's directions since it is in fact
processing white applicants at this very moment.

- 20. The reply to Paragraph 10 of Mr. Gunther's affidavit would appear to answer the first set of allegations of Paragraph 11 of his affidavit. As to his request for contempt I note that "contempt penalties and remedies" are not specifically spelled out or requested.
- 21. As to Paragraph 12 of Mr. Gunther's affidavit I know of no basis for his mistaken belief that this Union will engage in any contemptuous conduct or any reprisals against applicants to intervene.
- layoff of certain individuals referred to in Paragraphs 3 through 6 of Mr. Gunther's affidavit, I am advised by counsel that in a contempt proceeding those proposing the contempt must first cite a portion of the order relevant to the violation, which they have not done and that the individuals moving for contempt must prove their case factually. Despite the aforesaid advice of counsel, I am compelled to state upon information and belief, that the events as alleged by Mr. Gunther did not in fact occur and that no retaliatory action was taken against any of the seven named individuals involved and further that if and when required to do so in this or any proper forums the allegations will be answered.

(Opposing Affidavit of John Sheeran: Remaining Portions)

23. This Union has been placed in a precarious situation under the Court's Orders in that any action taken in terms of admissions, or in terms of employment, to the extent that it may benefit an individual of one race rather than an individual of another race, has become the subject of contempt. The Union cannot function under the constant threat of contempt instituted now by whites but perhaps tomorrow by non-whites.

WHEREFORE, your deponent prays that the motion for contempt by denied in its entirety and dismissed.

Sworn to before me this 1st day of May, 1974

Notary Public

RICHARD BROOK

CORRESPONDED STATE OF NEW YORK

FIG. 14.5.16.37.50

Commission Expires March 30, 1974

VINCENT D. McDONNELL, Esq.

Administrator, A.A.P., U.S. v. Local 638 et al.

August 13, 1973

Mr. Vincent Brennan, President Local 638, Enterprise Association, AFL-CIO 841 Broadway New York, New York 10003

Dear Mr. Brenn in:

The transitory provisions of the Order and Judgment of Judge Bonsal dated June 21, 1973 are very clear in its terms and provides for an opportunity for members of Local 638 B Branch, and others, to secure immediate membership in the construction, or A Branch. This opportunity presently is limited to Black and Spanish surnamed members. Please forward this letter to all members of the B Branch. The purpose of this letter is for any Black or Spanish surnamed member to be aware that he may now contact the Union office and advise that he feels he is qualified either to take the Practical Examination or to be certified under Section 11.C. of the Order.

Please attach to this letter the verbatim transcript of Section D transitory provisions 11. so that each B man can see firsthand the opportunity available to him.

VDM: RB

cc: Joel B. Harris, Esq.
Ernest Fleischman, Esq.
Thomas A. Shaw, Jr., Esq.
Dennis R. Yeager, Esq.

Enterprise Association

METAL TRADES BRANCH LOCAL UNION 638

REFRIGERATION AND AIR CONDITIONING SERVICE AND MAINTENANCE MECHANICS
HEATING AND PLUMBING SUPPLY HOUSE EMPLOYEES — SHOPMEN AND FABRICATORS
OIL BURNER, STUKER SERVICE AND MAINTENANCE MECHANICS

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United Status and Canada A.F.L. - C.I.O.

841 BROADWAY (Between 13th & 14th Sts.) New York, N.Y. 10003 285

Telephone: GRamercy 5-4414 4415

August 14, 1973

Dear Sir and Brother:

Enclosed please find copy of a letter from Vincent D. McDonnell, Esq., Administrator of the Federal Government's Affirmative Action Program, to Vincent Brennan, President of Steamfitters Local 638. As you will note, President Brennan has been requested to notify all members of the Metal Trades Branch, of the opportunities available to those qualified under Judge Bonsal's Decree, to transfer to the Construction Trades Branch of this Union.

Therefore, in compliance with the enclosed Directive, please be advised that Section D of the above mentioned decree entitled "Transitory Provisions" reads verbatim as follows:

"Temporary Procedures for Direct Admission to the A Branch"

"11. Following the issuance of this decree, and for the first 3 months following the adoption by the Court of the practical examination referred to in paragraph 13, infra, unless extended by the Court upon application of any of the parties — Local 638 shall admit as full journeymen members of its A branch only graduates of the apprentice program and non-whites who apply in writing and who meet the following conditions:

(a) 4 years' experience which shall include experience obtained in the United States or elsewhere, in Local 638's B branch, or in construction or maintenance plumbing, pipefitting or welding as an employee of a union or non-union contractor, or other employment reasonably related or similar to steamfitting work, including experience in the Armed Forces and vocational training related to the skills of a journeyman steamfitter; and either

(b) successful completion of a practical examination administered by a board of three examiners who shall act by majority vote, consisting of the Administrator or his representative from the union and one chosen by the Administrator from either the Recruitment and Training Program, Inc., or Fight Back (hereinafter "minority referral source") or

(c) certification by an employer who is a party to the present collective bargaining agreement with Local 638 that such non-white has been performing construction steamfitting work for at least six weeks within the territorial jurisdiction of Local 638 and is a competent steamfitter.

Applicant's criminal record, if any, may not be considered unless an applicant has been convicted of jobrelated crimes, within five years prior to the date of application.

There shall be no qualification for membership in the A branch other than those set forth above, and the payment of an initiation fee as described in paragraph 15.

All disputes with respect to admission of members shall be heard and determined by the Administrator. Any proposed changes in the procedures for admission to the A branch shall be considered by the Administrator, who shall take all steps necessary to ensure equal employment opportunities for non-whites. Any objections to changes in the admissions procedures, if any, instituted by the Administrator shall be resolved by the Court."

If you qualify under the aforementioned procedures and wish to request an "Application for Membership" in the Construction Trades Branch of Local 638, kindly do so in Writing Only.

Fraternally yours,

John J. Sheeran
Asst. Secretary-Treasurer

Enclosure

cc: Vincent Brennan
John Tracey
William J. Enright
Vincent McDonnell
Joel B. Harris
Ernest Fleischman
Thomas A. Shaw
Dennis R. Yeager

-138a-MEETS AT

(Opposing Affidavit of John Sheeran)

ENTERPRISE ASSOCIATION

STEAM, HOT WATER, HYDRAULIC, SPRINKLER, PNEUMATIC TUBE, COMPRESSED AIR, ICE MACHINE, AIR CONDITIONING AND GENERAL PIPE FITTERS OF NEW YORK AND VICINITY A. F. L. - C. I. O.

STEAMFITTERS LOCAL UNION 638 OF THE UNITED ASSOCIATION

SECRETARY'S OFFICE 841 BROADWAY NEW YORK, N.Y. 10003 Phone ORegon 4-3937

285

ROOSEVELT AUDITORIUM 100 East 17th Street New York City, N.Y.

April 26, 1974

Dear Sir:

Pursuant to the AFFIRMATIVE ACTION PROGRAM signed by the Honorable Dudley B. Bonsal, United States District Judge and being in effect March 31, 1974, please be advised that the enclosed literature is for your information.

Kindly be further advised that Paragraph 17 of the aforementioned AFFIRMATIVE ACTION PROGRAM states that a practical examination fee of \$25.00 shall be paid to the Secretary-Treasurer of this organization or his appointed representative at the time of your practical examination. PLEASE NOTE TIME AND PLACE OF EXAMINATION ON ATTACHED NOTICE.

BANK MONEY ORDERS ONLY WILL BE ACCEPTED. Please make money order payable to ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638.

Sincerely yours,

tary Treasurer

jjs:cd

Encl. - Directions to Techni-Weld Information on Practical Examination Notice - Time and Date of Examination (Opposing Affidavit of John Sheeran: Remaining Portions)

Instructions to get to:

Techni-Weld Associates, Inc. 43-11 11th St. Long Island City, N.Y.

Take I.R.T. Flushing train from Grand Central Station and get off at Court House Squre in Long Island City.

Take 8th Ave. Ind. subway, Jamaica train, and get off at Ely Avenue, Long Island City.

ENTERPRISE ASSOCIATION

OF

STEAM, HOT WATER, HYDRAULIC, SPRINKLER, PNEUMATIC TUBE, COMPRESSED AIR, ... ICE MACHINE, AIR CONDITIONING AND GENERAL PIPE FITTERS

OF NEW YORK AND VICINITY

A.F.L.-C.I.O.

STEAMFITTERS LOCAL UNION 638 OF THE UNITED ASSOCIATION

SECRETARY'S OFFICE 841 BROADWAY NEW YORK, N.Y. 10003 Phone Obegon 43737 235

ROOSEVELT AUDITORIUM
100 East 17th Street
New York City, N.Y.

Enclosed is YOUR PERSONAL NOTICE of the time, date and the location at which you will be tested to determine your eligibility for membership as a Journeyman in Steamfitters Local 638, U.A.

THE FOLLOWING IS FOR YOUR INFORMATION:

The practical examination shall be in three parts (A, B, and C) as set forth below. Each applicant will be required to take Part A, and either PART B or PART C. The nature of the displays and sketches will be determined by the Examining Board.

From a display of various tools, materials, and equiptment commonly used by steamfitters, the applicant will be asked to identify items exhibited, to explain their use, and to point out pertinent safety measures required in their use.

In addition, the applicant will be given a piping assembly

(Opposing Affidavit of John Sheeran: Remaining Portions)

sketch, similar to sketches used on the joh sites, and will be asked to select the necessary tools, material, and equiptment, and to make the assembly in accordance with the sketch. The assemblies to be made, such as the assembling of a low pressure drip trap or a unit heater, shall be determined by the Examining BCARD, who shall also determine the time limits for making the assemblies.

From a display of various tools, materials, and equiptment commonly used by pipewelders, the applicant will be asked to identify items exhibited, to explain their use, and to point out pertinent safety measures required in their use.

In addition, the applicant will be given a piping fabrication sheet, similar to sketches commonly used by pipewelders, and will be asked to select the necessary tools, material, and equiptment, and to fabricate the pipe assembly in accordance with the sketch. This procedure should require a minimum of a dimensioned cut, bevel and weld, and include the measured setup and tacking of several items of material. The fabrication sheet shall be determined by the Examining Board, who shall also determine the time limits for fabricating the piping assemblies.

From a display of various tools, materials, and equiptment commonly used by steamfitters in brazing and soldering, the applicant will be asked to identify items exhibited, to explain their use, and to point out pertinent safety measured required in their use.

In addition, the applicant will be given a plan of piping assembly requiring soldering and brazing, similar to plans commonly used by steamfitters, and will be asked to select the necessary tools, material, and equiptment, and to make the assembly in accordance with the plan. The assemblies to be made, such as the assembling of a riser with branch copper tubing, shall be determined by the Examing Board, who shall also determine the time limit for making the assemblies.

If you require further information, do not hesitate to contact this office.

METAL TRADES BRANCH LOCAL UNION 638

REFRIGERATION AND AIR CONDITIONING SERVICE AND MAINTENANCE MECHANICS
HEATING AND PLUMBING SUPPLY HOUSE EMPLOYEES — SHOPMEN AND FABRICATORS
OIL BURNER, STOKER SERVICE AND MAINTENANCE MECHANICS

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada A.F.L. - C.I.O.

841 BROADWAY (Between 13th & 14th Sts.) New York, N.Y. 10003 -G 285

Telephone: GRamercy 5-4414 4415

April 22, 1974

Dear Sir and Brother:

Pursuant to the Affirmative Action Program signed by the Honorable Dudley B. Bonsal, Federal Judge of the Southern District of New York and effective March 31, 1974, please be advised that applications for membership in the Building Trades Branch of this organization are now available upon request in writing. (Request form enclosed)

In accordance with the Affirmative Action Program the qualifications for direct admission to the CONSTRUCTION BRANCH of this organization are as follows verbatim:

B. Direct Admission to the A Branch

- 15. All admissions into the Union shall be on the same basis, regardless of race, color or national origin, and the procedures hereinafter set forth in this Section B are for the purpose of achieving the goals hereinbefore set forth in paragraph 3.
- 16. Applicants shall be admitted as full journeyman members of the A Branch if they meet the following conditions:
 - (a) are residents of New York City or Nassau or Suffolk Counties at the time of application, or of such adjoining areas as may be approved by the Administrator;
 - (b) have not been convicted of a job-related crime within five years of the date of application;
 - (c) have had four years' experience, including experience obtained in the United States or elsewhere, in the Union's B Branch, or in construction or maintenance plumbing, pipe fitting or welding, or other employment reasonable related or similar to steamfitting work, including experience in the Armed Forces and vocational training related to the skills of a journeyman steamfitter;

(d) have successfully completed a Court Approved Practical Examination administered by a Board of three Examiners as hereinafter provided in Paragraph 19.

In addition kindly be further advised that there will be a Practical Testing Fee payable on your examination date. The amount of said fee will be stated on your notification of time, date and location for your examination in accordance with Paragraph 17 of the aforementioned Affirmative Action Program.

If there is any further information you may require, please do not hesitate to contact this office.

Fraternally yours,

VINCENT E. BRENMAN President JOHN J. SHEERAN Secretary Treasurer

WILLIAM E. ENRIGHT Organizer

Enclosure

	DATE
ENTERPRISE ASSOCIATIO' Steamfitters Local 6], 841 Broadway	
New York, New York 10003	
Attention: SECRETARY TRE	ASURER
Dear Sir:	
Kindly forward me	e an application for membership
in the BUILDING TRADES BR	ANCH of this organization.
	Sincerely yours,
	Signature:
	NAME
	S.S. #
	Book #
	Address
•	
	Telephone Number
Date Received	
Application #Date Mailed	
Application Retd.	
Examination Date	

EXHIBIT E

NOTE: Paragraphs 11 through 14 of the Farrell affidavit, dealing with the motion to intervene and the affidavits submitted by the defendant Union in opposition thereto, were designated by Appellants and are reprinted at pages 28a-32a, supra. The remaining portions of the Farrell affidavits, paragraphs 1 through 10, have been designated by Appellee Union and are reprinted below.

(Caption Omitted)

STATE OF NEW YORK) SS.:

CHARLES T. FARRELL, being duly sworn, deposes and says:

- I am one of the seven applicants to intervene herein; I am fully familiar with the facts and proceedings herein; and I make this affidavit in reply to the affidavits of JOHNOTHAN LANG, VINCENT E. BRENNAN, JOHN J. SHEERAN, RICHARD VITALO, PATRICK M. CURRAN, JR., JOHN T. McCOOL and JAMES W. DOUGHERTY, submitted in opposition to the applicants' motions for intervention and related relief.
- 2. On April 19, 1974, I was fired by my employer,
 the Afgo Engineering Corporation, along with my fellow-applicants
 to intervene, HUGH DONNEGAN and JOHN GUNTHER. Together with Mr.
 GUNTHER, I came to our attorney's office the next day (a Saturday)

and was present while Mr. GUNTHER prepared his affidavit, sworn to that day. I am advised that that affidavit, and the other papers on applicants' motion to hold defendant in contempt and for preliminary injunctive relief, was served by mail on defendant Union and on the other parties hereto, by mail, on Aprill 22, 1974.

Also, on Saturday, April 20, 1974, in my presence, Mr. GUNTHER charges, prepared unfair labor practices against both our employer and Local 638, relating to our discharges. These were mailed to the NIRB's regional office that day.

TENSIH

- 3. The following Friday, April 26, 1974, Mr. GUNTHER, MR. DONNEGAN and myself were rehired. Mr. GUNTHER is still employed. However, the following Monday, April 29, 1974, Mr. DONNEGAN and myself were fired again, while other steamfitters employed on the same job and junior to us in company employment were retained. Mr. DONNEGAN and I are still unemployed.
- 4. As noted in paragraph 2 above, unfair labor practice charges have been filed concerning the first three discharges; to that extent Mr. LANG's affidavit is correct. I am concerned to note a related fact, however. Yesterday, DONNEGAN, GUNTHER and I visited the regional office of the National Labor Relations Board in Brooklyn, in connection with the charges that had been

filed. On that visit, we learned that Mr. LANG had written a letter to the regional office, asking it not to proceed with the unfair labor practice charges. I know of no reason or explanation for such hostile interest on the part of Mr. LANG.

- 5. I have read Mr. SHEERAN's affidavit and note his statements, in paragraphs 10 and 11, to the effect that the Union did not bring itself to get done what this Court ordered it to do, in the original Order of June 21, 1973, until as recently as late April of this year -- or some ten months later. I know of no reason or justification for such a dilatory response to this Court's Order. To my knowledge, it should have been possible to test and process the persons who applied for membership during the three-month period immediately following entry of the June 21, 1973 Order in a much shorter time.
- 6. I further note the statement in paragraph 11 of Mr. SHEERAN's affidavit that the defendant Union decided "... that it would await the adoption of the Affirmative Action Plan before processing whites." I understand that to mean that the Union, in apparent alliance with the Administrator, decided, without authorization from the Court, to ignore this Court's Order of November 20, 1973, at least insofar as the latter refers to appli-

cants for membershp other than non-whites and Spanish -Surnamed. That accords with the facts known to me. To my knowledge, the defendant Union has deliberately, willfully and purposely failed and refused to carry out to any degree at all this Court's Order of November 20, 1973, insofar as it refers to applicants for membership who are neither non-whitenor Spanish-surnamed.

T. Mr. SHEERAN states in paragraph 13 of his affidavit that it was not until late April, 1974, that the Union sent any notices for practical examination out to white applicants for membership. To be specific: the letter appended to his affidavit as Exhibit C is dated (Friday) April 26, 1974; since I, myself, received one such letter bearing that date, I can add (and do add) that it was in fact mailed and postmarked the following Monday, April 29, 1974. In the ordinary course of mail, the Unian's attorneys and the Administrator must have received Applicants' motion to hold the Union and its officers in contempt of Court on either Tuesday, April 23, or Wednesday, April 24. It would appear on the surface, therefore, that the Union's act in, at long last, scheduling white applicants for practical examination was a response to the motion of Applicants to Intervene to hold the Union and its officers in contempt of Court for their failure

(Reply Affidavit of Charles Farrell: Remaining Portions)

and refusal, up to that time, to do so. If so, or (alternatively)

if the Union and the Administrator were guided in so doing by the

fact that Applicants to Intervene had, at the beginning of April,

moved for leave to intervene on behalf of precisely these white

(or other than non-white and Spanish-surnamed) applicants for

membership, the result emphasizes the desirability of having this

class of persons represented before the Court in this action.

- 8. I know of no reason, justification or explanation for the Union's deliberate non-compliance with the Order of this Court entered November 20, 1973. I can find no justification or explanation in Mr. SHEERAN's affidavit; indeed, in paragraph 11 of his affidavit Mr. SHEERAN appears to admit that, at least during latter "few weeks" of March 1974, there was no reason, explanation or justification whatever.
- 9. Finally, in this connection, I know of no reason, explanation or justification for the Union's delay of an entire month in beginning to comply with this Court's Affirmative Action Plan.
- 10. The Union's selection of applicants for membership who are to be tested appears to be whimsical at best, and more probably deliberately discriminatory. The Applicant to Intervene JOHN GUNTHER, to my knowledge, made his application for membership

on or about September 25, 1973 -- or on almost the first and earliest possible date following expiration of the initial three-month period. He has not received a notice to take a practical examination. On the other hand, I made my application in October; I know of at least one other person who has received a notice to take the practical examination (and who is likewise white) who did not make application that il late November. It would appear that the Union's officers have so selected the persons to be sent notices as to discriminate against those who, like GUNTHER, have been especially active and noticeable in their efforts to gain admission of "B" men to membership in the "A" Local.

Memorandum Decision of Judge Bonsal, Endorsed on back of Notice of Motion (Rec. 82)

Motion to hold Local 608 in Contempt is denied. See Memorandum denying motion to intervene filed this day.

It is so Ordered

July 9, 1974

DUDLEY B. BONSAL

USDJ

Affidavits of Patrick M. Curran, Jr., John T. McCool and James W. Dougherty (Rec. #87)

STATE OF NEW YORK) : ss.:
COUNTY OF NEW YORK)

PATRICK M. - CVRRAW JR. , being duly sworn, deposes and says:

- 1. I am a member of the Metal Trades Branch of Enterprise Association, Steamfitters Local 638 of the U.A. and have been a member for approximately 5 years; this affidavit is made in opposition to the motion to intervene by Mr. Gunther and others, and in opposition to their claim to represent me and the other white members of the Metal Trades Branch of this Union as part of a class.
- 2. I have over the years acquired more than 5 years of experience as defined by Paragraph 11(a) of the Court Order dated June 21, 1973 and Paragraph 16(c) of the Affirmative Action Plan of March 29, 1974.
- 3. I believe that I can pass the Court approved practical examination; I have not been convicted of a job-related crime within the past five years; I reside within the Union's territorial jurisdiction and I am willing to pay an initiation fee to enter the Construction Branch of the Union.
 - 4. I do not want to be represented by Mr. Burton

(Affidavits of Curran, McCool and Dougherty)

Hall, Mr. John Gunther and the six other individuals named in his affidavit. I do not think they will adequately represent my interests or those of numerous other white members of the Metal Trades Branch of the Union because their views on what it means to be a Union member are completely different than mine; I trust the Union whereas they do not; I am willing to become a member of the Construction Branch in accordance with the procedures established by the Court, the Administrator and the Union whereas they went to gain admission according to their own timetable; I believe that the seven named individuals are not considering the rights and interests of those white members of the Metal Trades Branch of the Union who have more and far better experience than they have, for example, Mr. John Gunther, I understand, has been a member of the Metal Trades Branch only since August 20, 1971 and therefore does not even qualify under the U.A. Constitution and, I have more faith in the Union, the United States Attorney's Office and Mr. Vincent D. McDonnell, the Administrator, than I do in Mr. Hall; I do not want him to be my attorney.

- 5. I do not think the seven named applicants to intervene are typical of the members of the alleged class for the same reasons that I think they are not adequate representatives of the class.
 - 6. Although I applied for admission to the Con-

(Affidavits of Curran, McCool and Dougherty) struction Branch since the June 21, 1973 Order I understand that under that Order the Union was required to give preference to non-whites for a three-month period, and then under the November 20, 1973 Order until such non-white applications were to be processed first; the Affirmative Action Plan affords all the rights I need and I am confident that those rights will be upheld; no preference should be

given to seven impatient men who cannot even wait a few

weeks before suing their own Union.

7. While there may be about 500 white members of the Metal Trades Branch who may apply for Construction Branch membership I firmly believe that the vast majority of that group agree with me that Mr. Hall, Mr. Gunther and the other six men will not, cannot and should not represent us. I do not think that there are too many members with Mr. Gunther's view to make it impractical for them to all be named before this Court.

WHEREFORE, deponent prays that the motion to intervene and the motion to proceed as a class action be denied in its entirety. Patrick m Currange

Sworn to before me this 30th day of April, 1974.

> NOTARY PUBLIC, State of Heav York No. 41-7730500, Qualified in Queens Co. Commission Expires March 30, 1976

(Affidavits of Curran, McCool and Dougherty)

(Caption Omitted)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MA. Jolly TMCGoC, being duly sworn, deposes and says:

- 1. I am a member of the Metal Trades Branch of Enterprise Association, Steamfitters Local 638 of the U.A. and have been a member for approximately years; this affidavit is made in opposition to the motion to intervene by Mr. Gunther and others, and in opposition to their claim to represent me and the other white members of the Metal Trades Branch of this Union as part of a class.
- 2. I have over the years acquired more than 6
 years of experience as defined by Paragraph 11(a) of the
 Court Order dated June 21, 1973 and Paragraph 16(c) of the
 Affirmative Action Plan of March 29, 1974.
- 3. I believe that I can pass the Court approved practical examination; I have not been convicted of a job-related crime within the past five years; I reside within the Union's territorial jurisdiction and I am willing to pay an initiation fee to enter the Construction Branch of the Union.
 - 4. I do not want to be represented by Mr. Burton

(Affidavits of Curran, McCool and Dougherty)

Hall, Mr. John Gunther and the six other individuals named in his affidavit. I do not think they will adequately represent my interests or those of numerous other white members of the Metal Trades Branch of the Union because their views on what it means to be a Union member are completely different than mine; I trust the Union whereas they do not; I am willing to become a member of the Construction Branch in accordance with the procedures established by the Court, the Administrator and the Union whereas they went to gain admission according to their own timetable; I believe that the seven named individuals are not considering the rights and interests of those white members of the Metal Trades Branch of the Union who have more and far better experience than they have, for example, Mr. John Gunther, I understand, has been a member of the Metal Trades Branch only since August 20, 1971 and therefore does not even qualify under the U.A. Constitution and, I have more faith in the Union, the United States Attorney's Office and Mr. Vincent D. McDonnell, the Administrator, than I do in Mr. Hall; I do not want him to be my attorney.

- 5. I do not think the seven named applicants to intervene are typical of the members of the alleged class for the same reasons that I think they are not adequate representatives of the class.
 - 6. Although I applied for admission to the Con-

(Affidavits of Curran, McCool and Doughetty)

struction Branch since the June 21, 1973 Order I understand that under that Order the Union was required to give preference to non-whites for a three-month period, and then under the November 20, 1973 Order until such non-white applications were to be processed first; the Affirmative Action Plan affords all the rights I need and I am confident that those rights will be upheld; no preference should be given to seven impatient men who cannot even wait a few weeks before suing their own Union.

7. While there may be about 500 white members of the Metal Trades Branch who may apply for Construction Branch membership I firmly believe that the vast majority of that group agree with me that Mr. Hall, Mr. Gunther and the other six men will not, cannot and should not represent us. I do not think that there are too many members with Mr. Gunther's view to make it impractical for them to all be named before this Court.

WHEREFORE, deponent prays that the motion to intervene and the motion to proceed as a class action be denied in its entirety.

Sworn to before me this 30th

day of April, 1974.

NOTARY PUBLIC, State of New York No. 41-7732500, Qualified in Queens Co. Commission Expires March 30, 1976 (Affidavits of Curran, McCool and Dougherty)

(Caption Omitted)

STATE OF NEW YORK)

: ss.:
COUNTY OF NEW YORK)

JAMES W. Dough FRTY , being duly sworn, deposes and says:

- 1. I am a member of the Metal Trades Branch of Enterprise Association, Steamfitters Local 638 of the U.A. and have been a member for approximately // years; this affidavit is made in opposition to the motion to intervene by Mr. Gunther and others, and in opposition to their claim to represent me and the other white members of the Metal Trades Branch of this Union as part of a class.
- 2. I have over the years acquired more than 5
 years of experience as defined by Paragraph 11(a) of the
 Count Order dated June 21, 1973 and Paragraph 16(c) of the
 Affirmative Action Plan of March 29, 1974.
- 3. I believe that I can pass the Court approved practical examination; I have not been convicted of a job-related crime within the past five years; I reside within the Union's territorial jurisdiction and I am willing to pay an initiation fee to enter the Construction Branch of the Union.
 - 4. I do not want to be represented by Mr. Burton

(AFfidavits of Curran, McCool and Dougherty)

Hall, Mr. John Gunther and the six other individuals named in his affidavit. I do not think they will adequately represent my interests or those of numerous other white members of the Metal Trades Branch of the Union because their views on what it means to be a Union member are completely different than mine; I trust the Union whereas they do not; I am willing to become a member of the Construction Branch in accordance with the procedures established by the Court, the Administrator and the Union whereas they went to gain admission according to their own timetable; I believe that the seven named individuals are not considering the rights and interests of those white members of the Metal Trades Branch of the Union who have more and far better experience than they have, for example, Mr. John Gunther, I understand, has been a member of the Metal Trades Branch only since August 20, 1971 and therefore does not even qualify under the U.A. Constitution and, I have more faith in the Union, the United States Attorney's Office and Mr. Vincent D. McDonnell, the Administrator, than I do in Mr. Hall; I do not want him to be my attorney.

- 5. I do not think the seven named applicants to intervene are typical of the members of the alleged class for the same reasons that I think they are not adequate representatives of the class.
 - 6. Although I applied for admission to the Con-

(Affidavits of Curran, McCool and Dougherty) struction Branch since the June 21, 1973 Order I understand that under that Order the Union was required to give preference to non-whites for a three-month period, and then under the November 20, 1973 Order until such non-white applications were to be processed first; the Affirmative Action Plan affords all the rights I need and I am confident that those rights will be upheld; no preference should be given to seven impatient men who cannot even wait a few weeks before suing their own Union.

7. While there may be about 500 white members of the Metal Trades Branch who may apply for Construction Branch membership I firmly believe that the vast majority of that group agree with me that Mr. Hall, Mr. Gunther and the other six men will not, cannot and should not represent us. I do not think that there are too many members with Mr. Gunther's view to make it impractical for them to all be named before this Court.

WHEREFORE, deponent prays that the motion to intervene and the motion to proceed as a class action be denied in its entirety.

Sworn to before me this 30th day of April, 1974.

NOTARY PUBLIC. State of New York No. 41-7702520. Qualified in Queens Co. Commission Expires March 30, 1976

Affidavit of Johnathan Lang

(Caption Omitted)

STATE OF NEW YORK)

COUNTY OF NEW YORK)

JONATHAN LANG, being duly sworn, deposes and states that:

- 1. I am a law student working with the National Employment
 Law Project with offices at 423 West 118th Street, New York,
 New York 10027.
- 2. In my capacity of assisting Project attorneys Dennis R. Yeager and Richard Larson, I worked on the matter of the opposition to the application for intervention by John Gunther, et al. in the matter of George Rios et al. v. Enterprise Association Steamfitters Local 638 of U.A., et al.
- 3. In such capacity, on April 25, 1974, I engaged in a telephone conversation with Mr. Vincent J. Coffey of the National Labor Relations Board ("NLRB"), Region 29, with offices at 16 Court Street, Brooklyn, N. Y. 11241
- 4. In the above-mentioned telephone conversation Mr. Coffey informed me that Mr. John Gunther (applicant for intervention in the above-mentioned action) had filed an unfair labor practices complaint with the NLRB on April 23, 1974 alleging violations of \$\$\$(a) (1) and \$\$(a) (3) of the National Labor Relations Act ("NLRA") by Afgo Engineering Corp. and violations of \$\$\$(b) (1) and \$\$(b) (2)

(Affidavit of Johnathan Lang)

of the NLRA by Enterprise Association of Steamfitters Local 438.

JONATHAN LANG .

Sworn to before me this 26th day of April, 1974.

NOTARY PUBLIC

Comit of in New York Co Commission Express March 21, 1975

Affidavit of Dennis Yeager, Esq. (Rec. #94)

(Caption Omitted)

STATE OF NEW YORK)

COUNTY OF NEW YORK)

DENNIS R. YEAGER, being duly sworn, deposes and says:

- 1. That he requested Mr. Jonathan Lang, a law student employed by the National Employment Law Project, to write to the regional office of the National Labor Relations Board to request a copy of any complaints filed by the Applicants for Intervention in this matter.
- 2. That attached hereto as Exhibit A is a true copy of the letter prepared and mailed by Mr. Lang, which is the only letter written by or on behalf of attorneys for private

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(Affidavit of Dennis Yeager, Esq.)

plaintiffs to the National Labor Relations Board concerning said Applicants for Intervention.

Sworn to before me this 8th day of May, 1974.

April 25, 1974

Vincent J. Coffey, Esq. National Labor Relations Board Region 29 16 Court Street Brooklyn, N. Y. 11241

Dear Mr. Coffey:

Pursuant to our telephone conversation of today, I am formally requesting copies of the papers filed by Mr. John Gunther, et al. against Respondent Afgo Engineering Corp. and the Enterprise Association of Steamfitters Local 638.

As I explained to you, we are the attorneys in a closely related court action and these papers will be helpful to our litigation of that case.

Thank you very much for your assistance.

's/ Grather long

Jonathan Lang

JL:dl

· c	Transcript of Hearing, November 26, 1971, pp. 70-	74, 78
Office of the	1 gabr Hopkins-direct	70
2	THE COURT: All right.	
}∴ 3	BY MP. HAPRIS:	
4	Mr. Hopkins, turning your attention to this	past
5	summer, in conjunction with the joint apprenticeship n	ro-
6	grant, and you arrange for the pracement of ind non-whi	tes
7	on josa?	
8	A Counsel, there is within the industry a join	t
9	apprenticeship committee. We did not do it through	that
10	format. I did it throughthe Workers Defense League.	
11	THE COURT: The joint apprenticeship program	
12	is the title of the Workers Defense League. That is	
13	what I was referring to.	
14	A Yes, I did.	
15	O Would you describe generally for the Court h	ow
16	this took place last summer?	
17	A Well, basically we had again in late '70 thr	ough
18	'71 the economic pressures of doing business, and if w	6
19	wanted to stay in business, then we had to have a repr	esenta
20	tive number of minorities on our job.	
21	Having the experience from '64 and '66 to the	is
22	particular year and the numbers that were being require	€d,
23	as we had to answer, I could no longer with my staff me	aintain
24	myself as an employment agency. So that I went basical	lly
25	to Ernie Green, who heads up the Workers Defense League	e,

(Transcript of Hearing, November 26, 1971, pp. 70-74, 78)

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Hopkins-direct

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which is the recognized authority for professional recruiting of minorities in the construction business, and discussed
this problem with Ernie and his staff, coming to him with
what we considered the minimum requirements of our industry
at that time.

He and his staff assured me they could recruit 100, which was our requirement at the time, and then I sat in negotiations between the Workers Defense League and my own employers to fulfil this mission.

I got cooperation on both sides, and I felt the cooperation and coming frommy business agents or 638's business agents and officers. At the direction of my employers I proceeded down the street. Ernie Green, as you know, has recruting agencies all over the metropolitan area. I asked him also to bear down on Long Island because we were moving into Brookhaven and Stony Brook and those locations where government money was invested, and we would like to have some minority personnel from that area if it were possible.

Frnie Green and his staff went to work, and they had some, I guess it would be, 225, 250 recruits, of whom we had a demand for 100.

I then brought the members of the management aside of the Joint Apprentice Committee to discuss this

(Transcript of Hearing, November 26, 1971, pp. 70-74, 78)

program with Ernie Green and his staff, to look over the background of the candidates that were available, sketchy, as it was, and we continued. In the conversations for the program Ernie Green's staff made many mentions that a number of these people, minorities, said they were welders.

I bring out this point because I notice in the papers there that an examination was set up. In today's market, especially where minorities are concerned, there are many pressures that we are under, and especially in our Join: Apprenticeship Committee, that we conduct examinations to exclude people.

Sc I arranged an examination not for the purposes of excluding people, but for the purposes of determining whether or not those who Ernie Green's staff were reporting were welders. He had no more knowledge than I did of whether or not they were welders.

We were going to hire 100, but some were saying they were welders. We were sping to employ them in that specialty in our industry.

somewhere in the neighborhood of eight, ten thousand dollars to employ Voorhees Institute and its facilities and the necessary personnel and material, and before and after the 4th of July weekend we conducted -- I think the facilities

only allow about 12 or 14. We must have put 108, 110 minorities through a welding test, again not with the aim to eliminate sem as an individual in the pipefitting industry, but with an aim to determine whether or not they were welders.

My gang in my office said also it might be an advantage to bring the representatives of the Pittsburgh Pipe Welding Test Bureau in, which is the recognized authority for determining welding abilities and certain welding procedures. Economically that would add to our advantage, although it was an expense. We did. We tested the 108 people, and we were pleasantly surprised that some 25 or 26 having come in off the street come in a sense, with no prior preparation -- that is, in our particular area -- were certified by the Pittsburgh Testing Laboratory, and they gave us reason to believe that another 25 or 26 had the potential.

We, therefore, employed those people that were in that area in welding jobs, and the balance, whatever adds up to 100, we employed as steamfitters.

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33 -1 Hopkins-direct

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Q And subsequently were the 100 people but to work by members of the Mechanical Contractors Association:

A All were put to work by the members of the Mechanical Contractors Association, with the cooperation of my business agents, our business agents. That is, there were no explosions.

Q Now, a moment ago you mentioned that 25 or so of these men were tested and came out certified.

Could you describe for the Court what that means:

A I'm not an authority on this. There are people in the room. But basically, to take the edge off, certain building specifications by certain agencies required certain types of welding. There are some forty some odd welding procedures and normally within that forty there are certain recognized procedures that are general.

These people passed the general procedures that are accepted as a norm in our industry.

Are all the steamfitters presently employed by members of your association certified welders?

A where required, yes. Certain jobs have welding assignments without certified welders being required. But, yes, those where certification is required, they are 638 welders.

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document.

A These are the names of some of the minorities that I employed between 1956 and up until the summer of '71, I guess.

They were employed on A jober

A Yes, sir.

MR. HARRIS: I offer this in evidence.

MR. KAISER: I have no objection.

THE COURT: That will be received.

(Government's Exhibit 8 for identification was received in evidence.)

THE COURT: I take it these include the 125 you were talking about?

THE WITNESS: They do not. I think that list is about 75, your Honor.

THE COURT: But all these people are part of that 125?

THE VITNESS: Yes, sir.

MR. HARRIS: No further questions, your Honor.

THE COURT: All right.

MR. KAISER: I have no questions, your Honor.

THE COURT: All right.

(Witness excused)

MR. GLASSMAN: The Covernment calls William M.

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MECHANICAL CONTRA Plaint (15) Exhibit (35, Exhs. 11, 13 and 29

of New York, Inc.

OFFICERS

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HARDLO K. RAIDLES, PRESIDENT JOHN N. D. ANEDN. NICK-PRESIDENT GENAGE F. SHEFHAN TREASURGE JOHN E. HOLKINS, SUCRETARN

BOAPS OF DIPECTORS

THOMAS F. CARTY
JOT . PH A. COMMITTE
EDWARD P. MULTINY
HASCLID N. FAISLER
JOHN N. SCAMON
GEORGE F. DHILMAN
IRA WILLINER

230 PARK AVIENUE - NEW YORK, N. Y. 10017

MURPAY HILL 6-0-040

April 8, 1963

Mr. Murray Geller New York Area Coordinator Office of Pederal Contract Compliance 110 East 45th Street - Pa 533 New York, New York 10017

Dear Murray:

The purpose of this correspondence is to give you a current status report on the employment of minority journeymen in the Steanfitting Industry here in New York City.

We, the Mechanical Contractors Association of New York, Inc., are now employing on a full-time basis fourteen (14) miscrity journeymen.

As you know, we commenced this journeymen phase of our program in June of 1966 at which time you were so helpful in the initiation of our efforts.

It is further added that on March 15, 1963 Mr. Alexander E. Calabrese forwarded a list of eight (8) possible candidates for employment in our industry. It is now reported that three (3) of those named have been contacted, interviewed and employed; they are Mr. Roy L. Sargeant, Mr. Abdelrabman Salem and Mr. Pupert Williams.

The names of the other eleven goutlemen now fully employed as journeymen are available to you as well as the job locations should you so desire.

While it is true that we have not placed all of the minority journeymen at 900 Third Avenue or the Federal Office Building, it is also true that we have complied with the wishes and pressures of your office in fielding caployment for the deserving pinority personnel which we know to be the overall objective.

Please be assured of our continued cooperation.

Very truly yours,

bc: Mr. Alexander E. Calabrese

Mr. John N. Scanlon

Mr. Harold K. Raisler

Mrs. Harriet . I course

Joseph L. Hopkins

Secretary

(Plaintiffs' Exh. 135)



HOUSING AND DEVELOPMENT ADMINISTRATION
100 GOLD STREET, NEW YORK, N. Y. 10038 566-4204

ALBERT A. WALSH, Administrator

1

January 15, 1971

Mr. Joseph Hopkins, Secretary Mechanical Contractors Association of N.Y., Inc. 230 Park Avenue New York, N.Y. 10017

Dear Mr. Hopkins:

Enclosed are the names of seven experienced minority steamfitters.

As agreed in our telephone conversation of this morning, you plan to get in touch with each man to arrange an interview so that they may be placed on jobs.

We would appreciate knowing the arrangements you make for each man.

Sincerely yours,

Laila L. Long

Assistant Administrator

Office of Equal Opportunity

Enclosure

1/15/71

STEAMFITTERS

Ernest Bell 165 East 123 Street, #5E New York, N.Y. LE 4-2644

Radeliffe Cambridge 690 Villoughby Avenue Brooklyn, N.Y. 778-6031 h years experience as Welder; also worked as power brake and power press operator (Local 210, Teamsters)

15-20 years experience as steamfitter-welder.

nough the Ruit Brooklyn, N.Y.

Joseph Cuffie 1566 Sterling Place, #B9 Brooklyn, N.Y. About 6 years experience as steamfitter, plumber, welder.

About 5 years experience as steamfitter, welder.

FOUR DESTORE

Asbert St. Hilaire
3503 Foster Avenue, #5F
Brooklyn, N.Y. 11210

Experienced steamfitter-welder

or or out

Leslie Nesbitt 2 3503 Foster Avenue, #5F Brooklyn, N.Y. 11210 625-7563 Experienced steamfitter, welder.

Patrick Whittaker 690 Willoughby Avenue Brooklyn, N.Y.

About 7 years experience as steamfitter.

14 HRTIN MECH. 3-5-7/ JACOBI HOCK

Im 13X

Office of Equal Opportunity, HDA

nch sinter ?

107-06 3hth Avenue Corona, Hen York 11903 February 28, 1963

Mr. Joseph Hopkins Mechanical Contractors Association 230 Park Avenue New York, N.Y.

Dear Sir;

These are the names of pipefitters and welders from the minority group that are qualified and belong to the Metal Trades Branch. These men would like to get jobs in construction. They are as follows.

- 1. Lewis Lamonic 82/, East 161 St. Apt. 14 Bronx, N.Y.
- 2. Abdual Rahmans S. Salem 331 Henry St. Bklyn, N.Y.
- 3. George Florez 430 Schenick Ave. Bklyn, N.Y.
- 4. Roy Sargeant 128 Kingston Ave. Bklyn, N.Y. 11213
- 5. Rupert Williams 279 McDonough St. Bklyn, N.Y. 11232
- 6. Gerard Simon 620 West 149th St. N.Y., N.Y. Apt. 1D 10031
- . 7. Juan Macstrey 1219 Washington St. Hoboken, New Jersey
 - 8. Wilfred Newell 446 Kingston Ave. Bklyn, N.Y.
 - 9. Gladstone Skelton 868 Sterling Place P.O. 134 Bklyn, N.Y. 11216

Jours faithfully Rolling Hersell



STEAMFITTERS' INJUSTRY FUNDS ANALYSIS OF HOURS PAID CALENDAR YEAR 1971

Plaintiff's Exhibit 168

	HOURS	•	CONSTRUCTI	METAL S		UNION OFFICE		ALL OTHER	5	TOTAL		-
25 30 35 40 45 60 65 70 75 80 90 1,20 1,50 1,60 1,70 1,80 -1,90	0 to 449 0 to 499		47 28 19 24 19 13 10 18 9 17 12 16 35 75 49 41 62 84 186 263 238 230 1,702	87 10 4 8 17 16 10 11 12 10 11 26 25 59 27 39 38 43 75 65 30 59		15	\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	503 80 67 65 64 56 57 40 34 44 36 45 87 48 77 36 32 28 16 31 41 28 95		637 118 90 97 100 85 77 69 54 73 58 72 148 106 211 112 128 143 292 369 314 279 1,856	11.4 2.1 1.6 1.7 1.8 1.5 1.4 1.2 .9 1.3 1.1 1.3 2.6 1.9 3.7 2.0 2.3 2.7 5.6 5.6 5.6 5.0 33.1	Plaintiffs Exh. 168, 1971 Report
	TOTALS,	•	3,230	726	-	15		1,629		5,600	100.0	-172a-

Transcript of Conference, April 26, 1973, pp. 32-33, 60

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As you said, there will be no other way of being admitted. You have to come either through the apprenticeship program or through the experience examination method. I think what we would have to do is actually let it run for a while and see just how many people are available and how many can meet the requirements of qualification. I know Mr. Yeager, for instance, suggested that if you are a minority group, as long as an employer certifies you after six weeks on the job, that should be sufficient.

Well, first of all, you are not going to get qualified men that way and people certify anyone for various reasons. However, I go along with Mr. Shaw and that is that the door should be open to everyone who is qualified.

thinking the same kind of people we had at the time of the preliminary injunction and that is what was hitting me here and it was an attempt to correct the errors of the past. Listening to you gentlemen talk, I think I find that you all really agree that these transitory admissions shouldn't be limited to minorities as I had originally drawn it here.

What would you think of something like this, providing a period of time and I don't know what that period h

of timewould be, to have the program in two phases. The first phase to admit the people like the 169, and that usus encompass a certain period of time, I don't know what, 60 days or something like that.

And then after that, a second phase where either whites or non-whites who complied with these requirements could be admitted.

Would that make any sense?

MR. GLASSMAN: Your Honor, I think that would certainly make a good deal of sense. If I may add one further comment that troubled us, your Honor -- I have one further comment, one point that bothers us in this respect is still the 30-year age requirement and inthis respect we are concerned about, let's say a minority applicant who at this point in time although he may be under 30, has already had the requisite experience.

and I think I would leave it out. You are going to tell me that this is better than it was before, but is: would slow up the things for whatever the period of time was?

MR. SHAW: Yes, your Honor. I think that is correct. I think it is going to be probably more difficult to -- and we, as I said, if there are qualified blacks,

large extent affects the wage rate, it affects job opportunities and it is one which affects minority as well as white employees and Mr. Shaw did make a reference to the fact that something to consider inthis decree is to make sure that there are enough steamfitters.

I would just like to point up that that is exact.

the sort of issue that is a collective bargaining matter,

especially when rates isn't a factor.

I think, as I understood Mr. Shaw to say, that from the employer's point of view there are not enough steamfitters around. I think that is what he said. But I do agree that our efforts here are predicated on the minority representation and the minority jobs. I don't think I have an issue in this case at the present time that there shall be X thousand steamfitters in the City of New York. I don't thinkthat is in this case. It is a matter of collective hargaining to a certain extent, but the issue I have is to see that the -- that people who are classified and who have the experience and who are minority people have an opportunity to be steamfitters and that is what -- don't you agree with that?

MR. HARRIS: I do.

Your Honor, if I can just pick up one point that
